MONTANA ADMINISTRATIVE REGISTER

1978 ISSUE NO. 2 .
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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RULE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules relating to annual vacation leave for State employees	NOTICE OF PROPOSED AMENDMENT OF ARM RULES 2-2.14(14)-S14100, 2-2.14(14)-S14120, 2-2.14(14)-S14200, and 2-2.14(14)-S14230. (ANNUAL VACATION LEAVE)
	NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons:

1. On or after March 27, 1978, the Department of Administration proposes to amend ARM 2-2.14(14)-S14100, 2-2.14(14)-S14120, 2-2.14(14)-S14200 and 2-2.14(14)-S14230.

2. As proposed to be amended, the rules read as follows (matter to be stricken is interlined, new matter underlined):

2-2.14(14)-S14100 CALCULATING ANNUAL LEAVE CREDITS. Subsection (1) through (3) remain the same. Subsection (4) remains the same except that the chart has been revised as follows and one sentence has been added:

Not in pay status for entire month	
~~.05770~~ x No. hrs.	.058 x No. hrs.
~~.06924~~ x No. hrs.	.069 x No. hrs.
~~.08077~~ x No. hrs.	.081 x No. hrs.
~~.09231~~ x No. hrs.	.092 x No. hrs.

If a monthly employee is not in a pay status for the entire month and receives pro-rated benefits, the vacation leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

Subsection (5) remains the same except that the chart has been revised as follows:

80 hours in pay status per pay period		Less than 80 hrs. in pay status per pay period	
~~4.616~~	4.62	~~.05770~~	.058 x no. hrs.
~~5.539~~	5.54	~~.06924~~	.069 x no. hrs.
~~6.462~~	6.46	~~.08077~~	.081 x no. hrs.
~~7.385~~	7.38	~~.09231~~	.092 x no. hrs.

(6) Such leave credits for bi-weekly employees are to be rounded to ~~three~~ two digits beyond the decimal point and carried in the employee's account in that configuration.

2-2.14(14)-S14120 ACCERLERATED EARNING SCHEDULE. The first two sentences remain the same. The rest of the rule is amended to read: For calculating vacation leave credits, ~~two thousand eighty (2080) hours (52 weeks x 40 hours) shall equal~~

~~one (1) year~~, twelve (12) months will constitute a full year. "Years of employment" shall only include those months in which an employee was not on leave without pay more than fifteen (15) working days. Therefore, if an employee has prior service on a part-time basis or a seasonal basis that lasts for less than one full year, ~~the time will be converted to hours and divided by 2,080 hours to equal one year~~ and if the employee is in a pay status over one-half of the days in a month, that full month will be counted for earning vacation leave credits at the accelerated rate. This will also apply to part-time employees who work at least twenty (20) hours each week of a pay period and are in a pay status over one-half of the days in a month. The last sentence of that section will read: ~~This military service time accrual benefit is effective on July 1, 1977.~~ Military service time which meets the above criteria will count towards accruing accelerated vacation leave credits effective July 1, 1977.

2-2.14(14)-S14200 VACATION LEAVE ACCRUED DURING LEAVES OF ABSENCE WITHOUT PAY. Employees taking ~~an a approved~~ leave of absence without pay which exceeds fifteen (15) calendar days shall only accrue vacation leave credits for the first fifteen (15) days of the absence. Those employees who have not yet worked the qualifying six-month period, and who take an over fifteen (15) day leave of absence without pay, must begin anew the qualifying period to earn vacation credits. The employee would not lose any accrued vacation leave credits, but would not be eligible to use any credits until after working for six continuous months.

2-2.14(14)-S14230 EMPLOYEE LEAVE RECORD. This section will have one sentence added at the end of the paragraph to read: Carry-over of vacation leave credits will be computed on a calendar year basis and not on a fiscal year basis. (Revised example of Employee Leave Record follows.)

3. The rules are proposed to be amended to provide clarification of some ambiguities found in the annual vacation leave rules presently in effect. It was determined by the Personnel Division that an employee's vacation leave credits should only be carried out to two decimal points on leave records to lessen the chances of bookkeeping errors being made in manually kept records. Also, some editorial changes are being made to clarify the meanings of certain sections of the rules.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to Mr. William S. Gosnell, Administrator, Personnel Division, Department of Administration, Room 101, Mitchell Building, Helena, Montana 59601, no later than March 24, 1978.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written

request along with any written comments he has to Mr. William S. Gosnell, at the above address, no later than March 24, 1978.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed amendment is based on Section 59-913, R.C.M. 1947. Implementation authority is based on Section 59-1001-59-1007.1, R.C.M. 1947.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, February 15, 1978.

EXAMPLE

STATE OF MONTANA

EMPLOYEE LEAVE RECORD

From July 1, 19 76 To June 30, 19 77 NUMBER

Name (Last, First, Middle Initial)
Doe, John J.

Social Security No.	Sex	Position No.	Org. No.	Classification Title	
336-20-3010	M	2261	017004	Draftsman I	Grade 7

EMPLOYMENT DATE

	MO	DAY	YR
Agency	9	8	1975
State	9	8	1975

EMPLOYMENT BASIS
Status: [X] Full Time [ ] Part Time [ ] Seasonal
Condition: [X] Permanent [ ] Temporary [ ] Emergency

Agency Code: 9025 Agency Name: Public Works

Primary Location: Helena

ELIGIBLE FOR: SICK LEAVE As of ____ 19__ ANNUAL LEAVE As of March 8 1975 COMPENSATORY TIME [ ] Yes [X] No

RECORD IN HOURS

PAY PERIOD ENDING	SICK LEAVE (1)					VACATION LEAVE (2)			COMPENSATORY TIME			OTHER (3) LEAVE	
	Prior to 7-1-73		After 7-1-73			*Max. allowed at 12/31							
Monday	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Code	Hrs.
Balance Forward								76.0					
July 16						4.62		80.62					
July 30						4.62		85.24					
Aug 13						4.62		89.86					
Aug 27						4.62	40.0	54.48					
Sept 10						4.62		59.10					
Sept 24						4.62		63.72					
Totals													

EXPLANATIONS

(1) SICK LEAVE - Time used shall be charged first against leave balance prior to 7-1-73.

(2) VACATION LEAVE - Balance carried into the next calendar year shall not exceed two (2) times the maximum number of hours earned annually.

(3) OTHER LEAVE - Record leave code as follows: 11 - Military Training, 12 - Jury Duty, 13 - Disability - Workmen's Comp., 14 - LWOP first 15 continuous working days, 15 - Maternity, 19 - Other In Pay Status Leave (specify), 20 - Leave of Absence (specify)

TRANSFER (Record copy to new agency) TERMINATION (Attach copy to Payroll Termination)

CERTIFICATION

I hereby certify that the above information is proper and based on documents signed by the employee or as required by statutes or regulations.

Date Certifying Officer Title

Form EE-2 Rev. 6-75

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules relating to sick leave for State employees	NOTICE OF PROPOSED AMENDMENT OF ARM RULES 2-2.14(20)-S14280, 2-2.14 (20)-S14290, 2-2.14(20)-S14330, and 2-2.14(20)-S14450 (SICK LEAVE)
	NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons:

1. On or after March 27, 1978, the Department of Administration proposes to amend ARM 2-2.14(20)-S14280, 2-2.14(20)-S14290, 2-2.14(20)-S14330 and 2-2.14(20)-S14450.

2. As proposed to be amended, the rules read as follows (matter to be stricken is interlined, new matter underlined):

2-2.14(20)-S14280 CALCULATING SICK LEAVE CREDITS.

Section (1) remains the same.

Section (2) remains the same; (2)(a), the second sentence reads as follows: If the employee is in a pay status less than a full month, he/she accrues ~~.04615~~ .046 sick leave credits for each hour in a pay status. If a monthly employee is not in a pay status for the entire month and receives prorated benefits, the sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

(2)(b) Bi-Weekly Pay Period: If the employee is in a pay status eighty (80) hours or more in a pay period, he/she accrues ~~3.692~~ 3.69 hours sick leave credits per pay period. If the employee is in a pay status less than eighty (80) hours, he/she accrues ~~.04615~~ .046 sick leave credits for each hour in a pay status. Sick leave credits for bi-weekly employees are to be rounded to ~~three~~ two digits beyond the decimal point ~~(3.692)~~ (3.69) and carried in the employee's account in that configuration.

2-2.14(20)-S14290 PERMANENT PART-TIME EMPLOYEES. Will remain the same except for last sentence which will read: Example: Sick Leave Credits = ~~.04615~~ .046 x Hours worked.

2-2.14(20)-S14330 SICK LEAVE ACCRUAL DURING LEAVES OF ABSENCE WITHOUT PAY. Employees taking ~~an approved~~ a leave of absence without pay which exceeds fifteen (15) calendar days shall only accrue sick leave credits for the first fifteen (15) days of the absence. Those employees who have not yet worked the qualifying three-month period, and who take an over fifteen (15) day leave of absence without pay, must begin anew

the qualifying period to earn sick leave credits. The employee would not lose any accrued sick leave credits, but would not be eligible to use credits until after working for three continuous months.

2-2.14(20)-S14450 EMPLOYEE LEAVE RECORD. This section will have one sentence added at the end of the paragraph to read: Sick leave credits will be computed on a calendar year basis and not on a fiscal year basis. (Revised example of Employee Leave Record follows.)

3. The rules are proposed to be amended to provide clarification of some **ambiguities** found in the sick leave rules presently in effect. It was determined by the Personnel Division that an employee's sick leave credits should only be carried out to two digits on leave records to lessen the chances of bookkeeping errors being made in manually kept records. Also, some editorial changes are being made to clarify the meanings of certain sections of the rules.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to Mr. William S. Gosnell, Administrator, Personnel Divsion, Department of Administration, Room 101, Mitchell Building, Helena, Montana 59601, no later than March 24, 1978.

5. If a person who is directly affected by the proposed amendment wishes to express his data, veiws and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. William S. Gosnell, at the above address, no later than March 24, 1978.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed amendment is based on Section 59-913, R.C.M. 1947. Implementation authority is based on Section 59-1007-59-1008, R.C.M. 1947.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, February 15, 1978.

EXAMPLE A

STATE OF MONTANA

EMPLOYEE LEAVE RECORD

From July 1, 19 76 To June 30, 19 77 NUMBER:

Name (Last, First, Middle Initial): Doe, John J.

Social Security No.	Sex	Position No.	Class No.	Classification Title	
336-20-3010	M	2261	017004	Draftsman I	Grade 7

EMPLOYMENT DATE

	MO	DAY	YR
Agency	9	8	1975
State	9	8	1975

EMPLOYMENT BASE

Status: [X] Full-Time [ ] Part Time [ ] Seasonal

Condition: [X] Permanent [ ] Temporary [ ] Emergency

Agency Code	Agency Name	Physical Location
9025	Public Works	Helena

ELIGIBLE FOR ▶ SICK LEAVE As of December 8 19 75 ANNUAL LEAVE As of ____ 19__ COMPENSATORY TIME [ ] Yes [X] No

RECORD IN HOURS

PAY PERIOD ENDING	SICK LEAVE (1)					VACATION LEAVE (2)			COMPENSATORY TIME			OTHER (3) LEAVE	
	Prior to 7-1-71		After 7-1-71			Max. allowed at 12/31 ____ hrs							
Mo/Day	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Earn	Used	Bal.	Code	Hrs.
Balance Forward					10.40								
July 16			3.69		14.09								
July 30			3.69		17.78								
Aug 13			3.69		21.47								
Aug 27			3.69		25.16								
Sept 10			3.69		28.85								
Sept 24			3.69	16	16.54								
Totals													

EXPLANATIONS:

(1) SICK LEAVE – Time used shall be charged first against leave balance prior to 7-1-71.

(2) VACATION LEAVE – Balance carried into the next calendar year shall not exceed two (2) times the maximum number of hours earned annually.

(3) OTHER LEAVE – Record leave code as follows: 11 - Military Training, 12 - Jury Duty, 13 - Disability - Workmen's Comp., 14 - LWOP first 15 continuous working days, 15 - Maternity, 19 - Other In Pay Status Leave (specify), 20 - Leave of Absence (specify)

TRANSFER (Forward copy to new agency.) TERMINATION (Attach copy to Payroll Termination.)

CERTIFICATION:

I hereby certify that the above information is proper and based on documents signed by the employee or as required by statutes or regulations.

Date Certifying Officer Title

Form P-2 Rev. 6-75

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Department of Agriculture Repealing Rule 4-2.22(6)-S22080 in the present Chapter 22 and new Chapter 10, of the Rules of this department)	NOTICE OF PROPOSED REPEAL of Rule 4-2.22(6)-S22080. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 28, 1978, the Department of Agriculture proposes to REPEAL rule 4-2.22(6)-S22080. This rule is being repealed for clean-up purposes.

2. The proposed rule is being repealed because the department has made available in every county training for every individual desiring private applicator certification to use restricted use pesticides.

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

4. If a person directly affected wishes to express their data, views or arguments orally or in writing at a public hearing they must make written request for a public hearing and submit their request along with any written comments to Mr. W. Gordon McOmber before March 24, 1978.

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

6. The authority of the department to repeal this rule is based on 27-234, R.C.M. 1947.

W. GORDON McOMBER, Director

DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State February 15, 1978.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Department of Agriculture Amending rules for the present Chapters, 6; 14; 18; 22; 28 and 34.	))))	NOTICE OF PROPOSED AMENDMENT of rules in Chapters 6; 14; 18; 22; 28 and 34. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 28, 1978, the Department of Agriculture proposes to amend rules for chapters 6, 14, 18, 22, 28 and 34. These amendments are a clean-up process and are not considered as major changes. Most changes are language clarification to comply with the Annual Review Process and/or a result of departmental reorganization.

2. Rules listed below have language changes which could be considered more than a routine clean-up process.

Chapter 6:

4-2.6(2)-S647(1)(d) add this sentence before the history: A duplicate decal may be issued by the department upon receiving satisfactory evidence that the original decal was destroyed.

Chapter 22:

4-2.22(1)-S2200(5) Commercial pesticide seed treatment applicators, thos seed treaters using fumigants, vertebrate pest control applicators using ground applied baits....
(6) An applicator not experiencing any ~~pesticide~~ accidents or occurences involving general use pesticide(s)....

4-2.22(2)-S2270 (add before history) Cancellation of an escrow account may be accomplished by the licensee submitting a notarized statement to the department declaring that there are no pending or known claims or judgements against the licensee.

4-2.22(2)-S2280(5) (add after first paragraph) The department may accept for certification those federal employees certifed through an EPA approved federal agency certification program or if the employee has been certified by another state with comparable requirements and standards of the department. The department reserves the right to require federal employees to meet any special state certification standards.
(eliminate all of the secon paragraph under (5) beginning with: ~~The department will review...~~ through (a)(b)(c)(d) and (e).

4-2.22(2)-S2290(2) All applicants, whether commercial, public utility, or government, licensed or certified-licensed,

aerial or ground, shall be classified into one or more of....

4-2.22(2)-S22000(1)....~~Any individual applying for a license shall be required to pass a written examination prior to licensing, meeting the general competency standards of this regulation.~~ Any individual applying for a license or a certification-license shall be required to pass a written examination prior to....
The compentency of applicants shall be determined by their knowledge and passage of written examinations on the subject set forth in the ~~Montana Pesticide Manual for Applicators and Dealers, Cooperative Extension Service, Montana State University, 1974,~~ departments designated manuals for applicators,... The department may accept licensee examination scores from other states if the examination(s) are equivalent to the departments examinations, in lieu of the licensee having to pass the departments examinations. However all other standards and requirements of the department must be met by the licensee. The department will attempt to establish reciprocal licensing and certification agreements to assist in limiting the examination process for licensees.
(2)...
(5) Requalification. ~~All persons licensed as applicators in 1975 desiring a license for the calendar year 1976 and 1977 as determined by applicator classification, may be required to requalify for licensing by passing the basic examination dilution and equipment examination, and the specific examination or examinations required by the department per applicator classification. Thereafter, applicators~~ Applicators.....

4-2.22(6)-S22060(3)(second paragraph)
Applicants who are unable to read and understand labels or who have failed their examination or received a score of less than fifty percent (50%) on the quiz.....

4-2.22(10)-S22120(2) Retail sales of pesticides ~~are~~ not meeting these limitations shall be considered a violation of the Act. All retailers shall maintain for inspectional purposes, shipping, purchase, or invoice records of pesticide products received.

4-2.22(10)-S22130~~(3)~~ eliminate completely part ~~(3)~~
~~(4)~~(3)
~~(5)~~(4)
~~(6)~~(5)
~~(7)~~(6)
~~(8)~~(7)
~~(9)~~(8)
~~(10)~~(9)
(11) eliminate all of this part

4-2.22(18)-S22260(1) ~~By October 22, 1977, all~~ All pesticide products classified by the department must bear...

4-2.22(22)-S22360(1)

~~"GAP" means the government agency plan for qualifying federal employees for certification as applicators of restricted use pesticides.~~

~~"Singe purchase/single use certification" means the process whereby a farm applicator may obtain under certain conditions and standards one time only, the use of a restricted use pesticide from the department.~~

Chapter 28:

4-2.28(10)-S28040(1)(b) operating loans may be made for ~~$15,000 or~~ sixty percent (60%) of the value of the mortgaged property~~, whichever is less~~.

3. The reason for these amendments is to better clarify the language and restructure the departments rules for better clarification under the new reorganizational structure and compliance with the current laws of Montana.

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

5. If a person directly affected wishes to express their data, views or arguments orally or in writing at a public hearing they must make written request for a public hearing and submit their request along with any written comments to Mr. W. Gordon McOmber before March 24, 1978.

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

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

W. Gordon McOmber

W. GORDON McOMBER, Director

DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State February 15, 1978.

MAR Notice No. 4-2-47

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Department of Agriculture Amending Rules for the entire department by reorganization of said department.	NOTICE OF PROPOSED AMENDMENT of Rules for All of Title 4, Administrative Rules of Montana. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On March 28, 1978, the Department of Agriculture proposes to amend rules for all of Title 4, Administrative Rules of Montana to restructure said rules to accomodate the reorganizational structure of this department.

2. The changes made through this notice will be strictly a codification of the numbering system with some chapters being consolidated into one and all chapter numbers being changed to fit the new structure.

A new and old table will become part of this Title for cross reference from present rule numbers to the newly assigned numbers and new chapter numbers.

Rules for Chapter 1 remain the same.

Rules for Chapter 2 reamin the same.

Rules for Chapter 6 moved to Plant Industry Chapter but old rules assigned to the Rural Development Unit will become part of the Chapter 6 rules.

Rules presently found in chapters 6, 10, 14, 18, & 34 are now consolidated into a new Chapter 14 (Plant Industry).

Rules Presently found in Chapter 22 will be transferred to the new Chapter 10 (Environmental Management).

Chapter 26 - Marketing & Transportation Division will become a new Chapter 18 (Transportation Unit).

A new Chapter 22 will be for the new Crop and Livestock Reporting Unit.

Present Chapters 16 & 30 will be eliminated.

Chapters 38, 42 & 46 under Sub-Title 3 will be eliminated.

New Chapter 26 (Wheat Research and Marketing Committee) will be created.

Also a new Chapter 30 (Board of Hail Insurance).

3. The reason for the amendment of the above Title is to follow the Annual Review Process and clarify the rules now in force through a consolidation of the chapters of the department. The department underwent reorganization in November, 1977 and eliminated some divisions by consolidating into three (3) major divisions and four (4) units.

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

5. If a person directly affected wishes to express their data, views, or arguments orally or in writing at a public hearing they must make written request for a public hearing and submit their request along with any written comments to Mr. W. Gordon McOmber before March 24, 1978.

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

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

W. Gordon McOmber

W. GORDON McOMBER, Director

DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State February 15, 1978.

BEFORE THE STATE AUDITOR
AND EX OFFICIO COMMISSIONER OF INSURANCE
OF THE
STATE OF MONTANA

In the matter of the proposed adoption of a rule relating to life insurance solicitation.	NOTICE OF PUBLIC HEARING FOR THE ADOPTION OF A PROPOSED RULE (Life Insurance Solicitation)

TO ALL INTERESTED PERSONS:

1. A public hearing will be held on April 12, 1978, at 9:00 a.m., in the Senate Chambers, State Capitol, Helena, Montana to consider proposed action of the Commissioner of Insurance to adopt administrative rules relating to life insurance solicitation and requiring the furnishing of specified information to prospective purchasers of life insurance.

2. Rationale: The purpose of the rule is to require insurers to deliver to prospective buyers of life insurance, information that will improve the buyer's ability to select the most appropriate plan of life insurance for his needs, improve the buyer's understanding of the basic features of the policy that has been purchased or that is under consideration and improve the buyer's ability to evaluate the relative costs of similar plans of life insurance.

The proposed rule is patterned after the Model Life Insurance Solicitation Regulation of the National Association of Insurance Commissioners, and applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This rule will also apply to any issuer of life insurance contracts, with certain specific exceptions. The rule would not be effective until next November at the earliest.

3. Copies of the proposed rule are available at the office of the Commissioner of Insurance, Mitchell Building, Helena, Montana 59601.

In summary, the regulation defines various terms, specifies life insurance cost indexes, imposes disclosure requirements, and requires the preparation and distribution of a life insurance buyer's guide.

4. Interested persons may submit data, views or arguments concerning the proposed regulation orally, or in writing, at the hearing. Comments may also be submitted in writing to the Commissioner of Insurance, at the above address, prior to April 10, 1978.

5. Josephine Driscoll, Chief Deputy Commissioner of Insurance, has been designated to preside over and conduct the hearing.

6. The authority of the Commissioner is based upon 40-2710, R.C.M. 1947 and implements 40-3502.1(1), R.C.M. 1947.

E.V. "SONNY" OMHOLT
STATE AUDITOR & EX OFFICIO
COMMISSIONER OF INSURANCE

Certified to the Secretary of State February 15, 1978.

BEFORE THE STATE AUDITOR
AND EX OFFICIO COMMISSIONER OF INSURANCE
OF THE
STATE OF MONTANA

In the matter of the adoption of a rule relating to the replacement of life insurance and the repeal of rules 6-2.6(2)-S650, 6-2.6(2)-S660, 6-2.6(2)-S670 and 6-2.6(2)-S680 found in Sub-Chapter 2.	NOTICE OF PUBLIC HEARING FOR THE ADOPTION OF A PROPOSED RULE (Replacement of Life Insurance) AND THE REPEAL OF RULES FOUND IN SUB-CHAPTER 2 (Life Insurance Solicitation and Sales)

TO ALL INTERESTED PERSONS:

1. A public hearing will be held on April 12, 1978 at 9:00 a.m., in the Senate Chambers, State Capitol, Helena, Montana to consider proposed action of the Commissioner of Insurance to adopt administrative rules relating to replacement of life insurance and to repeal rules presently found in Sub-Chapter 2 of the Administrative Rules of Montana.

2. Rationale: The purpose of the revised rules is to protect the interests of life insurance owners by establishing minimum standards to be applied in the replacement of any such policies or contracts. In any transaction involving the replacement of such coverages it is essential that the owner be furnished full and clear information in his own best interest. This regulation is intended also to reduce the opportunity for misrepresentation and incomplete comparisons, and to preclude unfair methods of competition and unfair practices.

The rules to be repealed are found on pages 6-20 through 6-22 of the Administrative Rules of Montana under Sub-Chapter 2, and would be replaced by the adoption of a new rule covering life insurance solicitation.

3. Copies of the proposed rule are available at the office of the Commissioner of Insurance, Mitchell Building, Helena, Montana 59601.

In summary, the regulation provides a detailed definition of "replacement", defines other terms, exempts annuities, credit life, group life and other categories of insurance, specifies the duties of agents and insurers and creates a notice form.

4. Interested persons may submit data, views or arguments concerning the proposed regulation orally, or in writing, at the hearing. Comments may also be submitted in writing to the Commissioner of Insurance, at the above address, prior to April 10, 1978.

5. Josephine Driscoll, Chief Deputy Commissioner of Insurance, has been designated to preside over and conduct the

hearing.

6. The authority of the Commissioner is based upon 40-2710, R.C.M. 1947 and implements 40-3505, R.C.M. 1947.

E. V. "SONNY" OMHOLT
STATE AUDITOR & EX OFFICO
COMMISSIONER OF INSURANCE

Certified to the Secretary of State February 15, 1978.

BEFORE THE STATE AUDITOR
AND EX OFFICIO COMMISSIONER OF INSURANCE
OF THE
STATE OF MONTANA

In the matter of the proposed adoption and amendment of rules relating to credit life and disability insurance.	NOTICE OF PUBLIC HEARING FOR THE ADOPTION AND AMENDMENT OF RULES RELATING TO: (Credit Life and Disability Insurance)

TO ALL INTERESTED PERSONS:

1. A public hearing will be held on April 13, 1978, at 9:00 a.m., in the Senate Chambers, State Capitol, Helena, Montana to consider proposed action of the Commissioner of Insurance to adopt and amend administrative rules relating to credit life and disability insurance.

2. Rationale: The purpose for these proposed changes is to prohibit excessive charges; unfair trade practices currently taking place; revise the table for credit disability rates in accordance with legislative changes; limit pay-outs so that insurers maintain sufficient funds to pay claims and clarify present rules.

3. Copies of the proposed rules and the amendments are available at the office of the Commissioner of Insurance, Mitchell Building, Helena, Montana 59601.

In summary, the regulations specifically require that anticipated loss ratio of "claims incurred" to "premiums earned" is not less than 50%; reduce credit life rates; amend "Limitation on Presumption of Reasonableness" provisions for credit life and disability; clarify refund provisions; provide for joint credit life; extend credit disability rates to 10 years; and require creditors to remit premiums collected to insurers.

4. Interested persons may submit data, views or arguments concerning the proposed regulations orally, or in writing, at the hearing. Comments may also be submitted in writing to the Commissioner of Insurance, at the above address, prior to April 10, 1978.

5. Josephine Driscoll, Chief Deputy Commissioner of Insurance, has been designated to preside over and conduct the hearing.

6. Authority of the Commissioner is based upon 40-4215, R.C.M. 1947 and primarily implements 40-4210 and 40-4211, R.C.M. 1947.

E. V. "SONNY" OMHOLT
STATE AUDITOR & EX OFFICIO
COMMISSIONER OF INSURANCE

Certified to the Secretary of State February 15, 1978.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of rule ARM 16-2.14(10)-S14481 regarding water quality standards and repeal of rule ARM 16-2.14(10)-S14480 regarding water quality standards	))))))	SUPPLEMENTAL NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULE ARM 16-2.14(10)-S14481 AND REPEAL OF RULE ARM 16-2.14(10)-S14480 (Water Quality Standards)

On January 25, 1978, the Board of Health and Environmental Sciences (Board) published notice of a proposed rule concerning water quality standards. Subsequent to that notice, the Board obtained copies of the yet unpublished Attorney General's model rule 3. In order to conform the notice to sample form 4 of model rule 3, the Board has elected to supplement the above notice with the following rationale statement. It should be noted that this statement is repetitive of the policy statement and the authority section contained in the original notice. For that reason, the March 10, 1978, public hearing, scheduled at 9:00 a.m., or as soon thereafter as practicable, to be held in the Governor's Reception Room, Room 205, of the State Capitol, in Helena, Montana, has not been changed.

Rationale: Pursuant to Section 69-4808.2(1), R.C.M. 1947, the Board is required to review the water quality standards every three years. The proposed rule is the result of that review. The water quality standards are adopted to establish maximum allowable changes in water quality resulting from point or nonpoint discharges or from the activities of man and to establish limits for such discharges and activities. The Board adopts the policy that best practicable treatment, best management practice, and control of wastes, activities, and flows are to be provided to maintain water quality at the highest possible levels; therefore, dissolved colloidal and suspended chemical substances, toxic materials, radioactivity, turbidities, color, odor and other deleterious substances shall be maintained at the lowest possible levels.

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State February 15, 1978

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM Rules 32-2.6A(78)-S6330 and 32-2.6A(78)-S6331 to require Montana permits as a condition for importing livestock into Montana, and to place all requirements for the importation of semen into a single rule.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 32-2.6A(78)-S6330 and 32-2.6A(78)-S6331 (Import Rules)

TO: ALL INTERESTED PERSONS

1. On March 16, 1978, at 1:30 p.m. a public hearing will be held in the Highway Auditorium, State Highway Building, Capitol Complex, Helena, MT., to consider the amendment of rules 32-2.6A(78)-S6330 and 32-2.6A(78)-S6331.

2. The proposed amendments would alter import requirements for livestock species only to require that all livestock imported or moved into Montana be accompanied by a permit issued by the Department of Livestock. The proposals would also put all requirements for the importation of semen into a single rule.

3. Rule 32-2.6A(78)-S6330 as proposed to be amended provides as follows: (deleted material interlined, new material underlined)

32-2.6A(78)-S6330 IMPORTATION REQUIREMENTS (1) Definitions. When used in this sub-chapter.

(a) "Dairy Cattle" means cattle of dairy breeds or dairy types that may at some time be used for the production of milk or milk products for human consumption.

~~(b) "Non-reactor-herd" means one or more animals owned or supervised by one or more persons and kept in a location that permits easy inter-mingling of animals, or two or more groups of one or more animals under common ownership in which there is an interchange or movement between or among such groups without regard to health status, in which no animal has been identified by test, surveillance or other means as having disease transmissible to other livestock.~~

(b) "Livestock" means cattle, horses, mules, asses, sheep, swine, and goats.

~~(c) "Slaughter animals" means animals consigned and directly to state or federally approved abattoirs.~~

(c)~~(d)~~ "Animals" means livestock, ~~horses, mules, asses, cattle, sheep, goats, swine,~~ dogs, cats, rabbits, rodents, game animals, furbearing and wild mammals, poultry and other birds.

(d)~~(e)~~ "Poultry" means domesticated birds including, but not limited to, chickens, turkeys, ducks, geese, guina fowl, pigeons and pheasants.

(e) "Health Certificate" means a legible record written on

an official health certificate form of the state of origin or an equivalent form of the U. S. Department of Agriculture attesting that the animals described thereon have been visually inspected and found to meet the entry requirements of the State of Montana. In addition the health certificate shall conform to requirements of paragraph (6) of this rule.

(f) "Permit" means an official document issued by the Montana Department of Livestock after proper application which allows the movement of animals, or biologics into Montana. In addition, the permit shall conform to the requirements of paragraph (7) of this rule.

(2) Unless otherwise specifically provided in this rule ~~Section~~, all animals and poultry transported or moved into the State of Montana shall be accompanied by an official health certificate or a permit, or both, which shall be attached to the waybill or be in the possession of the driver of the vehicle or person in charge of the animals. When a single health certificate or permit is issued for animals being moved in more than one vehicle the driver of each vehicle shall have in his possession a copy of the health certificate or permit.

(3) (a) No animals affected with or which have been recently exposed to any infectious, contagious, or communicable disease, or which originate in a state or federally quarantined area shall be transported or moved into the State of Montana unless a permit for such entry is first obtained from the State Veterinarian of Montana. In addition, all conditions for the movement of animals from a quarantined area established by the quarantining authority or U. S. Department of Agriculture must be met.

(b) If any animal in a lot presented for shipment or movement into Montana shows a suspicious or positive reaction to any test required for admission to Montana, no animal from that lot or from the herd in which the animal reacting to the test originates may enter the State of Montana without special permission from the state veterinarian.

(4) Livestock may not enter the State of Montana unless accompanied by a Montana permit. This requirement applies regardless of the species, breed, sex, class, age, point of origin, place of destination, or purpose of the movement of the livestock entering the state.

~~(4)~~ (5) Animals which enter the State of Montana without a valid health certificate or permit, or both if required, or in violation of any rules of the Department of Livestock shall be held in quarantine at the risk and expense of the owner until released by an authorized representative of the Department of Livestock, Animal Health Division. The quarantine shall be released only after the department has been satisfied, by appropriate means, that the animals under quarantine as a result of non-compliance with this rule are not infected with

disease.

~~(5)~~ (6) Official Health Certificate.

(a) ~~An official health certificate is a legible record attesting the animals covered thereon meet the requirements of the State of Montana, written on an official from of the state of origin and approved by its livestock sanitary official, or an equivalent form of the U. S. Department of Agriculture issued by an approved, accredited veterinarian. Such certificate shall contain:~~ Health certificates shall be valid for not more than 30 days after the date of inspection, except where otherwise noted in this rule, and shall not be issued unless the animals described thereon comply with Montana entry requirements, and the health certificate contains: names and addresses of the consignor and consignee, place of origin of shipment, its final destination, accurate description or identification of each animal, purpose for which they are shipped, ~~and~~ method of transportation, and identification of the transporter.

(b) It shall indicate the health status of the animals involved, including dates and results of inspection and tests and vaccinations required by the State of Montana. A copy of the health certificate shall be mailed immediately to the state veterinarian of Montana, Capitol Station, Helena, Montana 59601.

(c) ~~Health certificates shall be valid for no longer than thirty (30) days after the date of inspection, provided that health certificates for swine shall be valid for no longer than ten (10) days after the date of inspection.~~ The veterinarian issuing the health certificate must certify that the animals shown thereon are free from evidence of any infectious, contagious, or communicable disease or known exposure thereto.

~~(d) No health certificate shall be issued unless the animals described thereon comply in all respects with the requirements of the State of Montana.~~

~~(6)~~ (7) Accredited veterinarians who are approved by the chief livestock sanitary official of the state of origin and accredited veterinarians in the employ of the U. S. Department of Agriculture may inspect animals for entry into the State of Montana.

~~(7)~~ (8) Permits:

(a) ~~Requests for permits shall be made by the Montana purchaser or recipient of the animals, and shall set forth the following information: names and addresses of consignor and consignee, number and kinds of animals, origin of shipment, final destination, purpose of shipment, method of transportation, and such other information as the state veterinarian may require.~~ Permits may be obtained by calling (406) 449-2976 or (406) 449-2043 and shall be issued in the name of the person or entity in Montana receiving the animal(s) shown thereon.

Persons applying for permits shall provide the following information: names and addresses of the consignors and consignees, number and kind of animals, origin of shipment (including in the case of livestock, the ranch where raised, and all intermediate stops in the past 6 months), final destination, purpose of shipment, method of transportation, including names of transporter, and such other information as the state veterinarian may require.

(b) Permits shall be valid for no longer than ~~ten~~ (10) days from the date of issuance unless otherwise specified.

(c) Permits shall be issued provided the animals shown thereon are in compliance with these rules. However, in order to cope with changing disease conditions the state veterinarian may refuse to issue a permit or make such conditions not specifically set forth in these rules for its issuance as is necessary to protect livestock health in Montana.

(d) Permits will be mailed to persons requesting them immediately upon issue. To facilitate the movement of animals or items required to enter Montana by permit, if the prerequisites have been met, a permit number may be issued by telephone. The permit number so issued shall be affixed to the health certificate if required, waybill, brand inspection certificate and any other official documents in this fashion: "Montana Permit No." followed by the number, and may be used in lieu of the official permit.

(e) When these rules require entry by permit, at the time the permit is issued, the department may require that an official health certificate be obtained either at the point of orgin, the point of destination, or some other location within Montana designated by the department.

Paragraphs (8) through (13) are renumbered (9) through (14) but otherwise remain unchanged.

~~(14)--Animals-and-poultry-entering-Montana-which-are consigned-directly-for-immediate-slaughter-to-licensed-slaughtering-establishment-where-federal-or-state-approved-meat inspection-is-conducted-may-enter-without-a-health-certificate or-permit-except-where-otherwise-required-by-state-or-federal law.--The-way-bill-accompanying-such-animals-must-be-marked "for-immediate-slaughter."~~

(15) Cattle. Cattle may enter the State of Montana provided they are transported or moved into the state in conformity with ~~Sections~~ paragraphs (1) through (14) of this rule and: ~~are-accompanied-by-an-official-health-certificate attesting-they-are-free-from-evidence-of-any-infectious, contagious,-or-permit-or-both-when-so-required.~~

(a) With regards to Brucellosis: Remains unchanged.

(b) With regards to tuberculosis: Remains unchanged.

~~(c)--If-any-animal-in-a-lot-presented-for-shipment-shows~~

~~a-positive-or-suspicious-reaction-to-tuberculosis-or-brucellosis-tests,-no-animal-from-the-herd-in-which-the-reactor originates-may-enter-the-State-of-Montana-unless-a-special permit-is-first-obtained-from-the-State-Veterinarian-of Montana.~~

~~(d)--Calves-without-dams-under-eight-(8)-weeks-of-age may-enter-Montana-by-permit-only.~~

~~(e)--Cattle-entering-from-a-state-or-province-in-which cattle-have-been-quarantined-for-scabies-in-the-past-six (6)-months-may-enter-Montana-by-permit-only.~~

(16) Dogs. Remains unchanged.

(17) Goats.

(a) Goats may enter the State of Montana provided they are transported in conformity with ~~the rules~~ paragraphs ~~contained in~~ (1) through (14) of this ~~subchapter~~ rule: ~~and-are-accompanied-by-an-official-health-certificate-attesting that-they-are-free-from-evidence-of-any-infectious,-contagious or-communicable-disease-or-known-exposure-thereto-or-by-a permit,-or-both-when-required,-and-dairy~~ Dairy and breeding goats may enter the State of Montana provided they originate in a certified brucellosis-free herd, for which the certified herd number and date of last herd test are shown on the permit, or health certificate; or they have been tested for brucellosis with negative results within ~~thirty~~ (30) days of the date of shipment and originate in herds which have been tested with negative results within the preceding ~~twelve~~ (12) months.

(18) Game, furbearing and wild animals. Remains unchanged.

(19) Horses, mules and asses. (a) Horses, mules and asses may enter the State of Montana provided they are transported or moved in conformity with ~~Rules~~ paragraphs (1) through (14) of this ~~subchapter~~, rule and: ~~are-accompanied-by-an-official health-certificate-attesting-that-they-are-free-from-evidence of-any-infectious,-contagious-or-communicable-disease,-or-known exposure-thereto.~~

(b) With regard to equine infectious anemia (EIA) all equidae ~~six~~ (6) months of age and over entering Montana must have been found negative to the Coggins (AGID) test or any other USDA approved test for EIA performed within ~~six~~ (6) months prior to entry. Owners of horse herds moving between Montana and an adjacent state may annually request and receive a waiver from the ~~six~~ (6) months EIA test requirement, provided the entire herd is tested for EIA at least annually, and the state veterinarian is satisfied that no serious harm to other livestock will result.

(20) Poultry, including hatching eggs, may enter the State of Montana provided they are transported or moved in conformity with ~~Rules~~ paragraphs (1) through (14) of this

~~subchapter;~~ rule and are accompanied by a permit or official health certificate as herein specified.

Sub-paragraphs (a), (b), and (c) remain unchanged.

(21) Sheep.

(a) Sheep may enter the State of Montana provided they are transported or moved in conformity with Rules paragraphs (1) through (14) of this Rule: ~~Sub-Chapter, and are accompanied by an official health certificate attesting that they are free from evidence of any infectious, contagious, or communicable disease, or known exposure thereto, or by a permit, or both when required.~~

(b) Rams with ram epididymitis shall not be shipped into Montana. The official health certificate if required or permit application shall certify that rams have been individually examined and are free from gross lesions of ram epididymitis.

(c) Sheep infected with biting lice (Damalina ovis) may enter by permit only after acceptable insecticide treatment under supervision of an accredited veterinarian.

(22) Swine.

(a) Swine may enter the State of Montana provided: they are transported or moved in conformity with ~~applicable~~ Rules paragraphs (1) through (14) of this ~~Sub-Chapter;~~ Rule and are accompanied by an official health certificate of the state of origin issued by an accredited veterinarian attesting that:

(i) The swine have been inspected within ~~ten~~ (10) days of the date of shipment; and

(ii) The swine are free from evidence of any infectious, contagious or communicable disease, or known exposure thereto; and

(iii) Each swine is identified by eartag, tattoo, or any permanent identification and such identification is recorded on the health certificate, if required, or permit application, and

(iv) The swine have not been fed raw garbage, and in addition to the above;

(v) The swine originate from a state free of any USDA quarantine for any swine disease.

(b) With regards to brucellosis all breeding swine ~~four~~ (4) months of age and over must:

(i) Be from a validated brucellosis free swine herd or from a validated brucellosis free state, or

(ii) Enter by permit only after a negative result to a brucellosis test performed not more than ~~thirty~~ (30) days prior to entry, as evidenced by an official brucellosis test result form.

(c) With regards to pseudorabies, all breeding swine ~~three~~ (3) months of age and over must:

(i) Be negative to serum neutralization (SN) test or any

other USDA approved test for detection of pseudorabies, administered not more than ~~thirty~~ (30) days before importation, and

(ii) Be from a swine herd which the inspecting veterinarian can certify as having had no clinical evidence of pseudorabies in the previous ~~twelve~~ (12) months.

~~(23)--Semen:~~

~~Any person, firm or corporation shipping semen into the State of Montana shall first obtain a permit from the State Veterinarian of Montana, which permit will authorize shipments during the period for which the permit is issued, unless revoked for cause:--Applications for permits shall be accompanied by a certificate issued by the chief livestock sanitary official of the state of origin, certifying that the sires from which the semen originates, and all animals with which they are associated, are free from evidence of any infectious, contagious or communicable disease or known exposure thereto, particularly brucellosis, vibriosis and trichomoniasis disease.~~

~~(24)~~ (23) Biological Products, remains unchanged.

4. Rule 32-2.6A(78)-S6331 is proposed to be amended by adding a new paragraph (5) which reads as follows:

"(5) Applications for permits shall be accompanied by a certificate issued by the chief livestock sanitary official of the state of origin certifying that the sires from which the semen originates, and all animals with which they are associated, are free from evidence of any infectious, contagious or communicable disease, or known exposure thereto, particularly brucellosis, vibriosis and trichomoniasis disease."

5. The effect of the amendments to rule 32-2.6A(78)-S6330, except the deletion of paragraph (23) thereof, is to require that livestock entering the State of Montana, from whatever point of origin and for whatever purpose, be accompanied by a Montana permit, either in the form of the permit itself or an official transportation document of the state of origin bearing the Montana permit number. This change is being proposed because an entry by permit system allows better protection against imported diseases by (1) giving the Department of Livestock prior notice to the fact of importation, (2)enabling the department to establish appropriate and necessary conditions for the issuance of a permit, when the livestock is coming from an area with known disease problems, (3) or, in the unusual instance, enabling the Department to refuse to issue a permit. Under the existing system, except as modified by an emergency rule implemented January 20, 1978, requiring permits for cattle, the department is generally not aware of livestock importation into the state except well after the fact of the movement. Another effect of the proposal would be to eliminate the need for health certificates in certain instances.

The deletion of paragraph (23) of rule 32-2.6A(78)-S6330 and the addition of language to Rule 32-2.6A(78)-S6331 has been made to place all of the import requirements for semen into a single rule.

6. Among issues to be considered are whether any exceptions to the permit requirements should be made, as for livestock moving directly to slaughter, or livestock moving back and forth across the state line by producers operating on both sides of the Montana border.

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

8. The hearing will be before the Board of Livestock, Robert G. Barthelmess, Chairman, presiding.

9. The authority of the department to amend these rules is based on section 46-208, R.C.M. 1947.

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman
Board of Livestock

Certified to the Secretary of State February 15, 1978.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the Amendment of rules 38-2.14(2)-S1430 through S1470, 38-2.14(2)-S1490 through S14120, 38-2.14(2)-S14140 and S14150 and the repeal of rule 38-2.14(2)-S1480.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES FOR CUSTOMER DEPOSIT FOR GUARANTEE OF PAYMENT AND NOTICE OF PROPOSED REPEAL OF RULE 38-2.14(2)-S1480 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 27, 1978, the Department of Public Service Regulation proposes to amend rules 38-2.14(2)-S1430 through S1470, 38-2.14(2)-S1490 through S14120 and 38-2.14(2)-S14140 and S14150 and repeal rule 38-2.14(2)-S1480.

2. Rule 38-2.14(2)-S1480 proposed to be repealed is on page 38-58B of the Administrative Rules of Montana and the rules as proposed to be amended are as follows (matter to be stricken is interlined, new matter is underlined):

Sub-Chapter 2

Customer Deposit for Guarantee of Payment

38-2.14(2)-S1430 ESTABLISHMENT OF CREDIT--RESIDENTIAL

(1), (a), (b), (c), (d) No change.

(e) Furnishing of a satisfactory guarantor to secure payment of bills for services requested in a specified amount not to exceed ~~the amount of cash deposit which may be required~~ an estimated one year bill, such estimation to be made at the time the service is established.

(f) ~~Demonstration that applicant is a satisfactory risk by appropriate means including, but not limited to, the production of the address of the listed business office of two major credit cards or other credit references, which may be quickly and easily checked by the utility.~~ In the case of telephone utilities, the guarantee amount may be accordingly adjusted when the actual interchange service charges are subsequently found to be more or less than those estimated.

38-2.14(2)-S1440 ~~of~~ ESTABLISHMENT OF CREDIT--NONRESIDENTIAL (1) No change.

38-2.14(2)-S1450 DEPOSIT REQUIREMENTS

(1), (a), (b), and (c) No change.

(d) Where the customer has, in an unauthorized manner, interfered with the service of the utility situated or delivered on or about the customer's premises within the last five years, if the finding of unauthorized interference or use is made and determined after notice and opportunity for hearing is provided to the customer and is not in dispute.

38-2.14(2)-S1460 PROHIBITED STANDARDS FOR REQUIRING CASH

DEPOSIT OR OTHER GUARANTEE FOR RESIDENTIAL SERVICE (1) A utility shall not require a cash deposit or other guarantee as a condition of new or continued residential utility service based upon commercial credit standards, (except as provided in these rules), income, home ownership, residential location, race, color, creed, sex, age, national origin, or any other criteria not authorized by these rules. This rule does not prohibit a utility from ensuring that agreements with customers who may be incompetent, such as minors, are made in such a manner, and with such persons, as to be legally binding.

38-2.14(2)-S1470 AMOUNT OF DEPOSIT (1) In instances where a deposit may be required by the utility, the deposit shall not exceed ~~one-tenth~~ one-sixth of estimated annual billings.

~~(a)~~ (2) In the case of telephone utilities, the deposit may be accordingly adjusted when the actual interchange service charges are subsequently found to be more or less than those estimated.

38-2.14(2)-S1480 EXTENDED PAYMENT OF DEPOSITS (IS HEREBY REPEALED)

38-2.14(2)-S1490 TRANSFER OF DEPOSIT (1) Where a customer of whom a deposit is required transfers his service to a new location within the same utility's service area, within the state of Montana, the deposit, less any outstanding balance, shall be transferable and applicable to the new service location.

(2) In the case of telephone utilities, the deposit is only transferable within the same exchange.

38-2.14(2)-S14100 INTEREST ON DEPOSITS (1) Interest on deposits held shall be accrued at the rate ~~established according to law as interest upon judgments in the state of Montana as of January 1 of each year~~ of six percent per annum. Interest shall be computed from the time of deposit to the time of refund or of termination.

38-2.14(2)-S14110 REFUND ~~ON~~ OF DEPOSITS (1) No change.

(a) Satisfactory Payment: Where the customer requests the refund, and has for 12 consecutive months paid for service when due in a prompt and satisfactory manner as evidenced by the following:

(i), (ii), (b) No change.

(c) Refunds--How Made: Any deposit, plus accrued interest, shall be refunded to the customer ~~either~~ in the form of a check issued and mailed to the customer no more than ~~15~~ 30 days following the termination of service or completion of 12 months satisfactory payment as described above. In the alternative, the deposit may be applied to the customer's bill of service in the 13th and, if appropriate, subsequent months, in accordance

with the preference as to form of refund indicated by the customer.

38-2.14(2)-S14120 RECORD OF DEPOSITS

(1), (a), (i), (ii), (iii), (iv), (v) No change.

(vi) ~~Identifiable name, position and signature of the utility employee receiving payment.~~ Identification of the employee receiving payment.

(vii) No change.

~~(c)~~ (b) A utility shall provide means whereby a customer entitled to a return of his deposit is not deprived of deposit funds even though he may be unable to produce the original receipt for the deposit. In such event company records shall be controlling.

38-2.14(2)-S14130 UNIFORM APPLICATION

(1) No change.

38-2.14(2)-S14140 GUARANTEE IN LIEU OF DEPOSIT

(1), (a) No change.

~~(b) Any individual or business entity able to demonstrate status as a satisfactory credit risk by the production in person of the address of the listed business office of two major credit cards or other credit references, which may be quickly and easily checked by the utility.~~

~~(c)~~ (b) Any special fund approved by the commission.

38-2.14(2)-S14150 GUARANTEE TERMS; CONDITIONS

(1), (a) No change.

(b) ~~It shall state the terms of guarantee, the maximum amount guaranteed and that the utility shall not hold the guarantor liable for sums in excess thereof unless agreed to in a separate written instrument.~~ It shall state the terms of guarantee, the maximum amount guaranteed (such maximum not to exceed an estimated one year bill, such estimation to be made at the time the service is established), and that the utility shall not hold the guarantor liable for sums in excess thereof unless agreed to in a separate written instrument.

(c), (i), (ii) No change.

3. The Commission has received numerous requests from regulated entities that the deposit rules as originally adopted be amended. The proposed amendments would better protect the utilities against losses caused by defaulting ratepayers, and would generally improve the administration of the deposits and associated record-keeping. Following an informal conference with the utilities and the Consumer Counsel, the Commission staff concurred in the amendments as here proposed.

The agency proposes to repeal rule 38-2.14(2)-S1480 because an initial payment of 50 percent of the deposit is felt to provide insufficient protection for the utilities. Allowing three months within which to make the deposit payment undercuts the purpose of the deposit, which is to protect the utilities dur-

ing that initial period when customer payment is uncertain.

4. Interested parties may submit their data, view or arguments, orally or in writing, concerning the proposed amendments to Dennis R. Lopach, 1227 11th Avenue, Helena, Montana 59601, phone 449-3007.

5. Authority of the Department to amend the proposed rules is based on Sections 70-104 and 82-4204, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE February 15, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF NURSING

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 March 27,1978, the Board of Nursing 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 Nursing, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than March 24, 1978.

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 Nursing, LaLonde Building, Helena, Montana, on or before March 24, 1978.

5. If the Board of Nursing receives requests for a public hearing on the proposed adoption of a new rule from more than one hundred (100) 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 Nursing to make the proposed adoption of a new rule is based on Section 82-4228, R.C.M. 1947.

DATED this 15th day of February, 1978.

BOARD OF NURSING
JANIE CROMWELL
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 2-15, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

IN THE MATTER of the Proposed Adoption of a Rule Regarding Standards of Conduct for Nursing Home Administrators.	))))	NOTICE OF PUBLIC HEARING on the Proposed Adoption of a Rule Regarding Standards of Conduct for Nursing Home Administrators.

TO: ALL INTERESTED PERSONS

1. On March 31, 1978 at 1:00 o'clock P.M. in the Highway Building Auditorium, 8th and Roberts, Helena, Montana, a public hearing will be held to receive testimony in the above entitled matter.

2. The adoption as proposed will read as follows:

" Standards of Conduct for Nursing Home Administrators

1. Shall take a positive approach to mental and physical health care.
2. Shall provide complete and comprehensive psychological and physical care.
3. Shall "expect" a real possibility of return by the person to the community.
4. Shall increase the fluidity between the institution and the community.
5. Shall have specific training directly relating to their work.
6. Shall create a wide spectrum of services and facilities to give progressive, graduated care.
7. Shall encourage volunteers to serve in a variety of activities conducted by the nursing home.
8. Shall have specific treatment plans.
9. Shall have periodic and comprehensive reevaluation of persons living within the institution.
10. Shall impose the fewest restrictive conditions on individuals residing in the institutions.
11. Shall allow direct access to legal course.
12. Shall recognize the need of individuals for both qualitative and quantitative privacy.
13. Shall protect patient resources.
14. Shall not deprive residents of their dignity.
15. Shall provide a general environment which will maintain reactivity.
16. Shall keep staff morale and dedication at a high level.
17. Shall avoid physical and chemical restraint.
18. Shall avoid "institutional neurosis".
19. Shall maintain a patient government.
20. Shall build research into their programs to better understand the elderly. "

3. The reason for the proposed adoption is to implement Section 66-3109, which imposes a duty on the Board to establish rules of proper conduct necessary to the maintenance of a Nursing Home Administrators' license. This proposed adoption will establish such guide lines, put the licensee on notice thereof and serve as grounds for suspension or revocation of a license upon proof of non-compliance with such standards.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written statements may be presented to the Board prior to the date of hearing and will be made a part of the record for the Board's review.

5. The Board of Nursing Home Administrators or its designee shall preside over and conduct the hearing.

6. The authority of the Board of Nursing Home Administrators to make the proposed adoption is based on Section 66-3109, R.C.M. 1947.

DATED this 15th day of February, 1978.

NURSING HOME ADMINISTRATORS
PHIL AUBLE
CHAIRMAN

BY: Ed Carney
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 2-15, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF OPTOMETRISTS

IN THE MATTER of the Proposed Amendment of ARM 40-3.70(6)-S7070, Examinations.	)))	NOTICE OF PROPOSED Amendment of ARM 40-3.70 (6)-S7070, Examinations

NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On March 27, 1978, the Board of Optometrists proposes to amend ARM 40-3.70(6)-S7070, Examinations

2. The amendment as proposed will delete existing subsections (3)(a) and (3)(c) in their entirety and will be replaced with the following language; (Note also that the name of the Board will be changed in (3)(b) to conform with Statute.)

"(3)(a) All applicants must pass Parts I and II of the written examination prepared by the National Boards of Examiners in Optometry.

"(3)(c) The Board may, at its discretion, and upon written request from an applicant, give a written examination composed by the Board of Optometrists. "

3. The reason for the proposed amendment is to clarify the existing rule to make it clear that the primary requirement is the examination prepared by the National Boards and that an exam prepared by the Board of Optometrists will only be given upon request and only where the Board feels such is a necessary alternative. The proposed amendment further specifies that both parts of the National Boards Examination must be passed. In making this change, the Board defers to the preparation expertise of the National Boards of Examiners in Optometry and to matters of expediency in using their services.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Optometrists, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than March 24, 1978.

5. 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 with any written comments he has to the Board of Optometrists, LaLonde Building, Helena, Montana, on or before March 24, 1978.

6. If the Board of Optometrists receives requests for a public public hearing on the proposed adoption of a new rule from twenty-five (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.

7. The authority of the Board of Optometrists to make the proposed adoption of a new rule is based on Section 66-1303.

DATED this 15th day of February, 1978.

BOARD OF OPTOMETRISTS
CARL A. TOTMAN, O.D.
PRESIDENT

BY: _____
Ed Carney, Director
Department of Professional
and Occupational Licensing

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF VETERINARIANS

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 March 27, 1978, the Board of Veterinarians 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 Veterinarians, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than March 24, 1978

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 Veterinarians, LaLonde Building, Helena, Montana, on or before March 24, 1978.

5. If the Board of Veterinarians receives requests for a public hearing on the proposed adoption of a new rule from twenty-five 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 Veterinarians to make the proposed adoption of a new rule is based on Section 82-4228, R.C.M. 1947.

DATED THIS 15th DAY OF February 1978.

BOARD OF VETERINARIANS
JACK L. REA
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional
and Occupational Licensing

Certified to Secretary of State 2-15, 1978

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

In the matter of the amendment of rule 46-2.10(18)-S11420 pertaining to medical assistance, eligibility requirements.	NOTICE OF PUBLIC HEARING FOR AMENDING RULE PERTAINING TO MEDICAL ASSISTANCE, ELIGIBILITY REQUIREMENTS.

TO: All Interested Persons

1. On March 22, 1978, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule 46-2.10(18)-S11420.

2. The proposed amendment repeals 46-2.10(19)-S11420(1)(b)(aaa) and (aae), amends (aaf) and adds a new (aaa), and (1)(c) in order to exempt the personal residence of a medicaid applicant from consideration in the determination of eligibility.

3. The rule as proposed to be amended provides as follows:

(aaa) ~~All real property including a home and lot not to exceed a market value of $26,000 shall be imposed. Income producing property necessary for self support, producing a reasonable rate of return, is to be excluded as a resource for medically needy eligibility.~~ All real property which is not income producing property or the principal place of residence of the applicant shall be considered as personal property and shall be subject with all other personal property to the personal property limitations. Income producing property which is necessary for self-support and produces a rate of return not less than 6 percent per annum shall not be considered a resource. The principal place of residence of the applicant, which consists of the dwelling house, and the land upon which it is situated, not to exceed 5 acres, shall not be considered a resource.

(aae) ~~A transfer of real property made to bring the persons within the real property limitations of $26,000 is subject to the personal property limitation outlined in (aab) above.~~

(aaf) All other Supplemental Security Income criteria concerning treatment of income and resources shall be observed ~~where it is appropriate.~~ except as provided in this rule.

(c) Property Transfers: (i) All real and personal property, except income producing real property and the principal place of residence, transferred by an applicant

for the purpose of establishing eligibility as an SSI-related categorically needy person or a medically needy person shall be considered a resource to the applicant and shall be subject to the limitations of this rule.

(ii) Any transfer, including but not limited to lease, sale, gift, placement in trust, or abandonment of homestead rights, completed within two years of the date of application, without consideration which reasonably approximates the fair market value of the property shall be presumed to be have been made for the purpose of establishing eligibility as an SSI related categorically needy person, or medically needy person.

4. The rationale for the amendment of this rule is to exempt the personal residence of a medicaid applicant from consideration in the determination of eligibility to assure that an otherwise eligible person is not forced to sell their home as a condition of receipt of medical assistance. In addition the amendments intend to restrict transfer of property without fair consideration for the purpose of establishing eligibility for medical benefits in order to assure that only truly needy persons receive such benefits.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data may be submitted to Richard Weber, P.O. Box 4210, Helena, Montana, 59601, any time before March 27, 1978.

6. 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.

7. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Section 71-1511, R.C.M. 1947. The implementing authority is based upon Section 71-1517, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State February 15, 1978.

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

In the matter of the amendment of rule 46-2.10(22)-S11670 pertaining to utility expenses.	NOTICE OF PROPOSED AMENDMENT OF A RULE PERTAINING TO INCOME DEDUCTIONS, FOOD STAMPS. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On **March 28,** 1978, the Department of Social and Rehabilitation Services proposes to amend rule ARM 46-2.10 (22)-S11670(1)(g) pertaining to utility expenses and deductions for food stamps.

2. The rule as proposed to be amended provides as follows:

(g) Shelter costs in excess of 30 percentum of the household's income after the above definition.

(i) Shelter costs will include:

(aa) Payments made on the shelter occupied by the household, including both first and second lien mortgages on such shelters.

(ab) ~~Payments~~ Expense incurred for heating, cooking, fuel, electricity, water and sewer, garbage and trash collection fees, and the basic service fee including tax for one telephone when made separately from shelter payments in (aa) above.

(ac) Property taxes, state and local assessments and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(ad) Any of the above costs when paid by vendor payments which were included as income.

(ii) Shelter costs do not include:

(aa) Fees charged for deposit on utilities including telephone, or damage or advance deposits on rental property.

(ab) Repairs or replacement of any appliance or any portion of the home due to wear and tear or mechanical problems.

(ac) Any costs related to housing not actually occupied by the household, except when such shelter has been temporarily abandoned by the household as a result of a natural disaster or casualty loss.

3. The rationale is: The department proposes to amend subsection (1)(g) of ARM 46-2.10(22)-S11670 in order to liberalize the rule on income deductions for shelter costs to include deduction of expenses incurred for the items listed rather than limiting such deduction to actual payments made.

SOCIAL AND
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4. Although no public hearing is contemplated, such a hearing will be held upon the request of interested parties in accordance with section 82-4204, R.C.M. 1947. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Joan Uda, Box 4210, Helena, Montana 59601, no later than March 27, 1978.

5. The authority of the department to make the proposed amendment to the rule is based on section 71-210, R.C.M. 1947. The implementing authority is based upon section 71-210, R.C.M. 1947.

Patricia E. Melby
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 15, 1978.

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

In the matter of the amendment of rule 46-2.6(2)-S6180N pertaining to child care agencies, personnel.	))))	NOTICE OF THE AMENDMENT OF A RULE PERTAINING TO CHILD CARE AGENCIES, PERSONNEL. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On **March 28,** 1978, the Department of Social and Rehabilitation Services proposes to amend rule 46-2.6(2)-S6180N pertaining to child care agencies, personnel.

2. The department proposes to amend rule 46-2.6(2)-S6180N(11)(a) by adding a subsection (iii) as follows:

(11) Health and nutrition. (a) Every child care agency must employ or have easy access to the following professionals:

(i) A licensed physician;
(ii) A licensed dentist;
(iii) A registered nurse; and
(iv) A qualified nutritionist.

3. Section (11)(a)(iii) was inadvertently left out of rule 46-2.6(2)-S6180N when it was submitted to be adopted.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Joan Uda, P.O. Box 4210, Helena, Montana 59601, no later than March 27, 1978.

5. The authority of the department to make the proposed amendment is based upon section 10-1318, R.C.M. 1947. The implementing authority is based upon section 10-1318, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State February 15, 1978.

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

In the matter of the adoption of rule ARM 46-2.10(18)-S11450 et. seq. governing reimbursement for skilled and intermediate nursing care.	)))))	NOTICE OF PUBLIC PARTICIPATION PLAN.

TO: All Interested Persons

On December 23, 1977, by MAR Notice Number 46-2-136, the Department stated its intent to adopt rules governing nursing care reimbursement under the Montana Medicaid program. On January 20, 1978, a public hearing was held, at which time comments were received on the proposed rules. In response to substantive comments received, the Department has made changes in the proposed rules. The text of the proposed rules, including all changes made in response to public comments, will be made available to interested persons for the purpose of soliciting further comment and refinement, under the following public participation plan.

1. Pursuant to section 82-4204(4), the Director of the Montana Department of Social and Rehabilitation Services will appoint an advisory committee of interested and affected persons to advise the Department on all aspects of the proposed rules governing reimbursement.

2. The following persons have been invited to serve on the committee:

Chairman: Phil Auble - Glendive Community Nursing Home
Ames and Prospect
Glendive, Montana 59330

Chuck Eckberg - Choteau County District Hospital
1512 St. Charles Street
P.O. Box 267
Fort Benton, Montana 59442

William Siegel - Laurel Nursing Home
421 Yellowstone Avenue
Laurel, Montana 59044

Ben Broderick - Park Place Nursing Home and Rehabilitation Center
15th Avenue South and 32nd Street
Great Falls, Montana 59401

SOCIAL AND
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John Bartos - Mountain View Memorial
Nursing Home
Box Q
White Sulpher Springs,
Montana 59645

Mike Lopach - Certified Public Accountant
Arcade Building
Helena, Montana 59601

3. In addition, the Department is scheduling a series of meetings around the state with interested and affected persons to provide information and receive detailed comment on the proposed rules. A tentative schedule of meeting times and general locations is set out below. The Department will make every attempt to notify all interested and affected persons of meeting times and specified locations by means of personal letters and general advertisement. The tentative schedule is as follows:

Location	Date	Time	Address
Havre	2/22/78	10:30 a.m.	T.B.A.
Glasgow	2/22/78	7:30 p.m.	T.B.A.
Glendive	2/23/78	10:30 a.m.	T.B.A.
Miles City	2/23/78	7:30 p.m.	T.B.A.
Missoula	3/1/78	10:30 a.m.	T.B.A.
Kalispell	3/1/78	7:30 p.m.	T.B.A.
Shelby	3/2/78	10:30 a.m.	T.B.A.
Great Falls	3/2/78	7:30 p.m.	T.B.A.
Lewistown	3/8/78	10:30 a.m.	T.B.A.
Billings	3/8/78	7:30 p.m.	T.B.A.
Bozeman	3/9/78	10:30 a.m.	T.B.A.
Butte	3/9/78	7:30 p.m.	T.B.A.

SOCIAL AND
REHABILITATION SERVICES

4. The Department does not intend to act on the adoption of the proposed rules until after the completion of the above public participation plan. Copies of the proposed rules with proposed changes will be provided upon request. Requests should be addressed to Office of Legal Affairs, Montana Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59601.

Patrick E. Malley
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 15, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules concerning any reduction in work force of State employees.	NOTICE OF ADOPTION OF RULES ARM 2-2.14(24)-S14470 through 2-2.14(24)-S14500 PERTAINING TO REDUCTION IN WORK FORCE

TO: All interested persons:

1. On December 23, 1977, the Department of Administration published notice of the proposed adoption of rules concerning any reduction in the work force of State employees at pages 1057-1062 of the Montana Administrative Register, issue number 12.

2. The agency has adopted the rule with the following changes:

2-2.14(24)-S14470 (Rule II) POLICY. Sections (a) through (h) remain the same as noticed. Section (i), the first sentence will read as follows: Upon recall from a lay-off or upon placement of an employee during the maximum inactive period of 260 working days necessitated by a lay-off, the employee's salary shall be determined as if the employee had never been laid off. The second sentence remains the same as noticed.

2-2.14(24)-S14500 (Rule IV) CLOSING. Sections (a) through (c) remain the same as noticed. Section (d) is added to read as follows: Examples of forms mentioned follow.

3. One comment was received from John Hollow of the Administrative Code Committee suggesting that we indicate the maximum number of days allowable to provide salary protection to an employee rehired during the time of a lay-off. This suggestion was included in the final rules.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules concerning procedures for State employees to apply for a Maternity Leave	NOTICE OF ADOPTION OF RULES ARM 2-2.14(28)-S14510 through 2-2.14(28)-S14550 PERTAINING TO MATERNITY LEAVE.

TO: All interested persons:

1. On December 23, 1977, the Department of Administration published notice of the proposed adoption of rules

concerning procedures for State employees to apply for a Maternity Leave at pages 1063-1068 of the Montana Administrative Register, issue number 12.

2. The agency has adopted the rule with the following change:

2-2.14(24)-S14550 (Rule V) CLOSING. The first sentence will become section (a). Section (b) will be added to read as follows: Examples of the forms mentioned follow.

3. One comment was received from John Hollow of the Administrative Code Committee suggesting that we use Title 41, Chapter 26, R.C.M. 1947 as the implementing authority for this rule. This will be so indicated in the replacement pages.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-2.14(2)-S1420 relating to State employees who are members of the National Guard of the state of Montana.	NOTICE OF AMENDMENT OF ARM RULE 2-2.14(2)-S1420 (CONTINUING EMPLOYEE BENEFITS)

TO: All interested persons:

1. On December 23, 1977, the Department of Administration published notice of the proposed amendment of ARM Rule 2-2.14(2)-S1420 which limited employee benefits to thirty calendar days when a State employee takes leave without pay when ordered to active service in the National Guard of the state of Montana at pages 1069-1070 of the Montana Administrative Register, issue number 12.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Jack C. Crosser
Jack C. Crosser, Director
Department of Administration

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 18-2.6AI (14)-S6340 relating to outdoor advertising regulations.	))))	NOTICE OF THE ADOPTION OF AMENDMENT OF RULE 18-2.6AI (14)-S6340 relating to outdoor advertising regulations.

TO: All Interested Persons:

1. On December 23, 1977, the Department of Highways and the Highway Commission published notice of a proposed amendment to rule 18-2.6AI (14)-S6340 concerning Outdoor Advertising regulations pertaining to secondary roads placed on primary system at page 1084 and 1085 of the 1977 Montana Administrative Register, issue number 12.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because the Department has determined that various sign owners along the aforementioned routes have not applied for permits, and it is advisable to extend the date for application to allow these owners to conform to Montana's Outdoor Advertising statutes and regulations.

Director of Highways

Certified to the Secretary of State February 15, 1978.

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

Adoption of Amendment to rule 24-3.8(30)-S8360, FACTFINDER.

1. The Board of Personnel Appeals published notice No. 24-3-8-29, noticing a proposed amendment of Rule 24-3.8(30)-S8360 concerning factfinder, on November 25, 1977, at page 849, Montana Adminsitrative Register, 1977, issue Number 11.

2. The Board of Personnel Appeals has adopted the proposed amendment to conform the existing rule to the existing statute, 59-1614 (4). No testimony or comments were received.

3. The amendment to the rule has been adopted with the language changes as shown below:

FACTFINDER. (a) Either party to a dispute may petition the board to initiate fact-finding or the Board, if it is apparent that matter in disagreement might be more readily settled if 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 ~~seven~~ 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 ~~three~~ two names and then the other party strike ~~three~~ two names. The remaining name is that of the fact finder.

The remainder of the rule is unchanged. When the rule was first written, Section 59-1614 (4) required that this Board submit seven names. The statute was later amended to read five names. The amendment, therefore, conforms the rule to the statute.

Repeal of 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, adoption of uniform rules.

1. The Board of Personnel Appeals published notice No. 24-3-8-30, noticing a proposed repeal of the above cited rules, on November 24, 1977, at page 851, Montana Administrative Register, 1977, Issue Number 11.

2. The Board of Personnel Appeals has repealed the above rules in order to combine its rules into one set of rules and

cut down considerably the repetition of rules and the number of pages used by this Board in ARM. Rules 24.8.000 through 24.8.209 as they appeared at page 640, Montana Administrative Register, 1977, Issue Number 10, and as adopted in the rule section of the January, 1978, Issue of the Montana Administrative Register pages 74 and 75 for the Department of Fish and Game grievance procedure (Title 26, Chapter 1, R.C.M. 1947) have been amended to be uniform organizational and procedural rules for all statutes administered by this board. No testimony or comments were received.

APPROVED AND ADOPTED 2/15/78
CERTIFIED TO THE SECRETARY OF STATE 2/15/78

BY Brent Crosley
Chairman of the Board of Personnel Appeals

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION

In the Matter of the Proposed Amendments to ARM 24-3.18(1)-01800, Division Organization, and ARM 24-3.18(6)-S1820, Functions of the Division; and the proposed adoption of ARM 24-3.18B(1)-S1800, Functions of the Division in Relation to the Crime Victims Compensation Act, ARM 24-3.18B(2)-S1810, Reporting, Compensation Payments, Medical Information, and ARM 24-3.18B(3)-S1830, Informal Hearing Procedures.	NOTICE OF AMENDMENTS AND ADOPTIONS OF RULES

TO: All Interested Persons

1. On December 23, 1977, the Division of Workers' Compensation published notice of proposed amendments to rule 24-3.18(1)-01800 concerning division organization, and rule 24-3.18(6)-S1820 concerning functions of the division, and proposed adoption of rule 24-3.18B(1)-S1800 concerning functions of the division in relation to the crime victims compensation act, rule 24-3.18B(2)-S1810 concerning reporting, compensation payments and medical payments, and rule 24-3.18B(3)-S1830 concerning informal hearing procedures, at pages 1090 through 1093 of the 1977 Montana Administrative Register, issue number 12.

2. The agency has amended the two rules as proposed, and has adopted the three rules as proposed.

3. No comments or testimony were received. The agency has amended and adopted the rules because it was necessary to amend and adopt rules to implement the new Crime Victims Compensation Act because all parties will need information concerning the procedures for submission of claims and related reports, as well as information concerning the procedures for the payment of benefits in matters relating to medical treatment. Also, the Legislature has required the division to adopt rules concerning its informal hearing procedures, and the division is proposing to set forth specific procedures to be utilized at such hearings.

DIVISION OF WORKERS' COMPENSATION

Norman H. Grosfield

Norman H. Grosfield, Administrator

Certified to the Secretary of State February 10, 1978

32-2.6A(78)-S6330 BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

REASON FOR EMERGENCY AMENDMENT OF RULE 32-2.6A(78)-S6330

The purpose of this emergency rule is to prevent the introduction of cattle scabies into Montana. Cattle scabies is a highly contagious infestion of mites which thrive in colder climates and cause serious economic loss. The mites enter the skin of the host animal and through the course of their life cycle cause intense itching, loss of hair, formation of scabs, weight loss, and death if untreated.

Presently scabies is reaching epidemic proportions in a number of states, and in the last month has been diagnosed in the neighboring states of South Dakota and Wyoming.

Scabies can be successfully treated by dipping cattle in proper concentrations of approved pesticides. However, because Montana has been essentially free of scabies since the early 1930's dipping vats are in short supply and not usefully located should a statewide problem develop. The chemicals available for dipping present threats to the environment because of difficulties of disposal. Finally the cost of dipping, which in some instances must be done twice, is high. The department does not want to add that additional cost burden to a Montana industry that is already in serious financial condition.

So long as scabies is not present in Montana the most effective means of keeping it out short of a total embargo is for the department to know before importation that cattle are to be moved into Montana and to have the power to set appropriate conditions for import, including dipping and inspection, where necessary.

The emergency amendment will accomplish that by requiring the issuance of a permit prior to the movement of cattle into Montana. At the present time the department is frequently not aware of cattle movements until one or two months after the import has occurred because of the slowness of processing health certificates in the state of origin. It is anticipated that a permanent rule covering this matter will be noticed for hearing in the February issue of the Montana Administrative Register.

32-2.6A(78)-S6330 IMPORTATION REQUIREMENTS

Sections (1) through (14) remain the same.

(15) Cattle. Cattle may enter the State of Montana provided they are transported or moved into the state in conformity with sections (1) through (14) of this rule and are accompanied by ~~an official health certificate attesting they are free from evidence of any infectious, contagious or communicable disease, or known exposure thereto, or by a permit, or both when so required~~ a Montana permit issued prior to entry. At the time the permit is issued, the department may require that an official health certificate be

obtained at either the point of origin or point of destination. To expedite the movement of cattle, if the prerequisites have been met, a permit number may be issued by telephone. The permit number so issued shall be affixed to the health certificate if required, waybill, brand inspection certificate and any other official documents in this fashion: "Montana Permit No." followed by the number.

(a) and (b) remain the same.

(c) (d) and (e) are deleted.

Sections (16) through (24) remain the same.

(History: Sec. 46-208, 46-209 and 46-211, R.C.M. 1947; Eff. 12/31/72; AMD. Eff. 11/4/75; AMD. Eff. 6/5/76; AMD. Eff. 5/5/77; EMERG. AMD. Eff. 1/20/78.)

emerg. amd. eff. 1/20/78
obsoleted 4/19/78

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF ATHLETICS

Adoption of Rule 40-3.14(2)-P1415 CITIZEN PARTICIPATION RULES-INCORPORATION BY REFERENCE

1. The Board of Athletics published Notice No. 40-3-14-4 of a proposed adoption of new rules relating to public participation in board decision making on December 23, 1977 at page 1094 MAR 1977, Issue No. 12.

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.

Wherever the word, 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified.

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 COSMETOLOGISTS

Adoption of Rule 40-3.30(2)-P3015 CITIZEN PARTICIPATION RULES - INCORPORATION BY REFERENCE

1. The Board of Cosmetologists published Notice No. 40-3-30-27 of a proposed adoption of new rules relating to public participation in board decision making on December 23, 1977 at page 1098 MAR 1977, Issue No. 12.

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.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified. This adoption specifies that under Sub-Section (3)(a) of the Department Rules that the Board of Cosmetologists and the officers of the Montana State Cosmetologist Association will act as the screening committee rather than the Department Director and his designated staff.

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, with the above noted exception 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 COSMETOLOGISTS

Repeal of Rule 40-3.30(6)-S30405 ELECTROLYSIS
Repeal of Rule 40-3.30(6)-S30408 ELECTROLYSIS
Sub-Chapter 6 and Sub-Chapter 8
are Hereby Repealed, (Sub-Chapter
Numbers and Headings only.)

1. The Board of Cosmetologists published Notice No. 40-3-30-26 of a proposed repeal of the Numbers for Sub-Chapter (6) and (8) and Repeal of ARM 40-3.30(6)-S30405 and ARM 40-3.30(8)-S30408.

2. The reason for the repeal is that when the above stated revision was made the Board inadvertently neglected to repeal two (2) Sub-Chapter numbers and two (2) rules. The rules to be repealed were taken from the section index, which was not, at that time, up to date, and thus the ommission.

3. No requests for hearing were made or comments received.

4. The repeal of the rule numbers and rules has been made exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF PLUMBERS

Amendment of ARM	40-3.82(6)-S8230	DEFINITIONS
Repeal of	40-3.82(6)-S8250	STATE PLUMBING CODE; INCORPORATION OF UNIFORM PLUMBING CODE BY REFERENCE.
Repeal of	40-3.82(6)-S82070	INSPECTION - PERMIT FEES

1. The Board of Plumbers published Notice No. 40-3-82-19 of a proposed amendment to ARM 40-3.82(6)-S8230, Definitions and the repeal of ARM 40-3.82(6)-S8250, State Plumbing Code; Incorporation of Uniform Plumbing Code by Reference and ARM 40-3.82(6)-S82070, Inspection - Permit Fees on September 23, 1977 at Page 512, MAR 1977, Issue No. 9.

2. The amendment simply eliminated all references to the State Plumbing Code, Inspection and any enforcement of such plumbing code. The reason for such amendment is that all plumbing code enforcement functions were removed from the Board of Plumbers by the 1977 Legislative Assembly and transferred to the Department of Administration. The Board of Plumbers therefore has no authority or need for such rules.

3. The Board of Plumbers has delayed adoption of this amendment at the request of the Department of Administration to give that agency an opportunity to incorporate the Boards' rules or any additions or deletions thereto into its own rules. The Board has been advised that the Department of Administration will have completed this process by the March 1978 publication of the register. While the Boards' adoption of this proposed amendment is made at this time to comply with the statutory six (6) months adoption limitation, this adoption specifically establishes the March 1978 publication date as the effective date for the amendment.

No requests for hearing were made or written comments received.

4. The amendment has been adopted exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF PUBLIC ACCOUNTANTS

Amendment of ARM 40-3.94(6)-S94090 ANNUAL LICENSE TO PRACTICE

1. The Board of Public Accountants published Notice No. 40-3-94-9 of a proposed amendment of ARM 40-3.94(6)-S94090, Annual License to Practice on December 23, 1977 at Page 1100, MAR 1977, Issue No. 12.

2. The amendment as proposed and printed in full text in the Notice was for the purpose of clarifying the status of an unrenewed license during a statutory three (3) year grace period. The reasons for such proposal were fully set out in such Notice.

3. The Board received no written comments or objections with the exception of a letter from the MAR Committee. That letter stated certain difficulties with the proposed amendment, and suggested alternative languages there to. That language reads as follows:

> "Any licensee who does not wish to pay the renewal fee for the intervening three years shall return his certificate and or license to the Board. At such time as he pays the renewal fee, his certificate or license shall be returned to him."

4. The Board concurs with this suggested language, with however, some additional language to make it clear that the return of the license is mandatory for any one or all of the intervening three (3) years and to specify when the return must be made. The Board would thus re-state the Committee's Proposal as follows:

> "Any licensee who does not wish to pay the renewal fee for any one or all of the intervening three(3) years shall return his certificate to the Board on or before the commencement of the year or years in which he chooses not to renew. At such time as he pays the renewal fee, his certificate or license shall be returned to him."

The Board has confirmed this revised language as acceptable with Mr. Bob Pyfer of the Administrative Code Committee. At the further suggestion of such committee, the Board will retain the first sentence of existing sub-section (2), (originally proposed for deletion,) as it provides necessary explanation and clarification.

5. The Board has determined that in light of the fact that these clarifications from the amendment as proposed simply makes it clear that the rule prohibits only the "holding out" and not the practice, as provided by statute, that the substance of the amendment has not been changed and that another notice is not required.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF RADIOLOGIC TECHNOLOGISTS

Adoption of Rule 40-3.96(2)-P9615 CITIZEN PARTICIPATION RULES-INCORPORATION BY REFERENCE

1. The Board of Radiologic Technologists published Notice No. 40-3-96-4 of a proposed adoption of new rules relating to public participation in board decision making on December 23, 1977 at page 1102 MAR 1977, Issue No. 12.

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.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified.

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 REAL ESTATE

Adoption of Rule 40-3.98(6)-S98085 SUSPENSION OR REVOCATION-VIOLATION OF RULES-UNWORTHINESS OR INCOMPETENCY

1. The Board of Real Estate published Notice No. 40-3-98-8 of a proposed adoption of a Code of Ethics on July 25, 1977 at page 108 MAR 1977, Issue No. 7. A public Hearing was held on that proposed adoption on August 19, 1977. As a result of that hearing and after reviewing all statements and testimony received, the Board post-poned adoption of the rule as proposed and prepared a revision thereof, which was proposed for adoption in Notice No. 40-3-98-10, published on December 23, 1977 at Page 1104, MAR 1977, Issue No. 12. That Notice scheduled a public hearing on the revised proposal and such hearing was held on January 14, 1978.

2. The Board has adopted the rules as proposed in Notice No. 40-3-98-10. The full text of those rules is herein omitted as such was published in that notice.

3. The Board has made no changes as a result of the January 14, 1978 hearing in that no objections were raised as to the revised form of the revised rule.

4. The Board did receive a letter from the Montana Administrative Code Committee concerning the proposed rule. That letter suggested no substantive changes as to the rule proposed. Rather, the Committee suggested that items (a), (b) and (c) under Rule #2 would be better located under a separate section in that they describe affirmative data rather than unethical type conduct. That letter further suggested that item (f) be re-worded so as to describe the prohibited act as an unethical type conduct.

The Board concurred with the suggestions of the Committee and will comply with those suggestions in its replacement pages to be submitted on or before February 28, 1978.

Amendment of Rule 40-3.98(6)-S98040 RENEWAL - INACTIVE LIST-REGISTER

1. The Board of Real Estate published Notice No. 40-3-98-11 of a proposed amendment of 40-3.98(6)-S98040, Renewal - Inactive List - Register, on December 23, 1977 at Page 1107, MAR 1977, Issue No. 12.

2. The amendment provides a procedure under which those existing non-resident salesman licenses will be classified and maintained. The notice indicated that such salesman status was eliminated, effective December 4, 1976, and that no more would be issued. The method of disposition of such existing licenses was described in full text in the Notice.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF REAL ESTATE

3. On December 15, 1977, and prior to the December 24, 1977 publication date of the Notice, the Board received a letter of objection to the elimination of non-resident salesman licenses from Mr. Paul B. Larsen, Boise, Idaho, a non-resident Montana broker. Such objection registered a concern that elimination of the non-resident salesman license would infringe upon Mr. Larsen's real estate transactions within Montana. By letter of December 23, 1977, the Board responded and offered Mr. Larsen an opportunity to further offer comments and objections prior to the January 22, 1978 adoption of the proposed rule. No further comments or objections were received.

4. The amendment to this rule has been adopted exactly as proposed.

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

In the matter of the amendment of Rule 46-2.6(2)-S674 pertaining to definition of family day care homes and Rule 46-2.6(2)-S6100 pertaining to day care licensing services, eligibility require-ments.	NOTICE OF THE AMENDMENT OF RULE 46-2.6(2)-S674 AND RULE 46-2.6(2)-S6100.

TO: All Interested Persons

1. On December 23, 1977, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to rule 46-2.6(2)-S674 pertaining to definition of family day care homes and rule 46-2.6(2)-S6100 pertaining to day care licensing services, eligibility requirements at page 1139 of the 1977 Montana Administrative Register, issue number 12.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received. The agency has amended the rules for two reasons; the first to make the state regulations comply with the Federal Social Service Regulations, in particular 45 C.F.R. 228.42. Secondly, it is hoped that the change will help avoid a hardship which occurred under the prior rules. Under the prior rules, a home operator's children who were under 14 were counted towards the maximum number of children allowed, whether or not they were actually in day care.

Patrick E. Malloy
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 13, 1978.

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 THE ADOPTION OF RULE 46-2.6(6)-S6517, 46-2.6(6)-S6517A, 46-2.6(6)-S6517B AND 46-2.6(6)-S6517C.

TO: All Interested Persons

1. On November 25, 1977, the State Department of Social and Rehabilitation Services published notice of a proposed adoption of rules pertaining to protective services for aged persons and disabled adults at page 932 of the 1977 Montana Administrative Register, issue number 11.

2. The agency has adopted the rules as proposed.

3. No oral or written comment was received at the public hearing. However, the comment was received by letter that the Department should add homemaker services to the list of protective services available. The Department declines to do this because the homemaker program operates under its own eligibility standards, and finds that it is not appropriate to define or expand this eligibility through the protective services rules. Further, under the protective services rules as proposed, homemaker services are available as a resource for individuals meeting the homemaker eligibility standards. The reason the agency is 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.

Patricia E. Malloy
Director, Department of Social
and Rehabilitation Services

Certified to the Secretary of State February 15, 1978.

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

In the matter of the amendment of rule 46-2.10(14)-S11150 pertaining to eligibility requirements for AFDC.) NOTICE OF THE AMENDMENT OF RULE 46-2.10(14)-S11150.

TO: All Interested Persons

1. On December 23, 1977, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to rule 46-2.10(14)-S11150 concerning eligibility requirements for AFDC at page 1119 of the 1977 Montana Administrative Register, issue number 12.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because the term "essential person" is technically a misnomer for this situation. The change is being made in order to make the state rules conform with the state plan submitted by the Department of Health, Education and Welfare. The change in terminology will have no effect on the coverage of caretaker relatives.

Director, Social and Rehabilitation Services

Certified to the Secretary of State February 15, 1978.

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

In the matter of the amendment of rule MAR 46-2.10(14)-S11150 pertaining to eligibility requirements for AFDC.	))))	NOTICE OF THE AMENDMENT OF RULE 46-2.10(14)-S11150.

TO: All Interested Persons

1. On December 23, 1977, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to rule 46-2.10(14)-S11150 concerning eligibility requirements for AFDC at page 1109 of the 1977 Montana Administrative Register, issue number 12.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because the current regulation on the unemployed father fails to specify the option selected by the Department, as provided for in CFR 45 233.100(a)(2), as to whether or not AFDC/UF benefits are denied an unemployed father who disqualifies himself for unemployment compensation benefits by reason of conduct. This amendment conforms the rule to the corresponding provision in the state plan for Title IV A, AFDC.

Patrick E. Malley
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 15, 1978.

46-2.10(14)-S11350 SOCIAL AND REHABILITATION SERVICES

REASON FOR ADOPTING EMERGENCY AMENDMENTS TO ARM RULE 46-2.10(14)-S11350

The purpose of this amendment is to provide immediately effective standards for county welfare offices to use in determining whether an applicant for or recipient of AFDC benefits has good cause for failing to cooperate in establishing paternity of a child or obtaining child support. Section 402(a)(26)(B) of the Social Security Act, 1974 Amendments, required that such good cause determinations be made, but also required the Secretary of the United States Department of Health, Education, and Welfare to promulgate regulations for good cause determinations. The Secretary has not done so, and the issue of whether a state was allowed or required to make its own determinations absent the Secretary's regulations has been litigated in a number of courts, including the United States Supreme Court, in Maher v. Doe, 97 S.Ct. 2474(1977). The Supreme Court did not resolve the issue. However, very recently the Department of Health, Education, and Welfare directed this department to implement ad hoc case by case determinations. The department must adopt rules containing appropriate standards to make such determinations. In response to this, the department, in MAR Notice No. 46-2-138, noticed a hearing on the identical amendment to ARM rule 46-2.10(14)-S11350. However, it has come to our attention that a substantial number of needy individuals are being denied assistance because of the department's lack of standards for determining good cause. A number of these individuals have requested hearings, but in the meantime are not receiving assistance as this rule would provide. Further, not all individuals who have been denied assistance for this reason have requested a hearing, and the department has no way of knowing who they are and cannot direct the county welfare offices to grant or reinstate assistance without this rule. Therefore, the department finds that there is an imminent peril to public health, safety, and welfare and that immediate adoption of this rule is essential.

AS AMENDED, RULE 46-2.10(14)-S11350 PROCEDURE FOR SECURING SUPPORT FROM ABSENT FATHERS IN BEHALF OF CHILDREN READS AS FOLLOWS:

46-2.10(14)-S11350 PROCEDURE FOR SECURING SUPPORT FROM ABSENT FATHERS IN BEHALF OF CHILDREN (1) For each AFDC case where deprivation of parental support is based on absence of a parent from the home, except in the case of death, as a condition of eligibility, the applicant or recipient must:

(a) Furnish his or her social security account number.

(b) Assign child support rights to the Department of Social and Rehabilitation Services by signing an EA-32, Assignment of Collection of Support Payments.

(c) Applicants and recipients must cooperate in establish-

ing paternity and obtaining child support. This requirement may be waived upon a showing of good cause for failure or refusal to cooperate.

(i) Good cause exists in the following circumstances:

(a) Cooperation would not be in the best interest of the child because of the likelihood of the cooperation resulting in substantial danger, physical harm, undue harassment or severe mental anguish to the child or caretaker relative.

(b) The child was conceived as a result of forcible rape or an incestuous relationship.

(c) The applicant or recipient is planning to relinquish or has relinquished the child to a public or licensed social agency for the purpose of adoption.

(d) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.

(e) The applicant or recipient's legal rights to the child have been terminated by a court of competent jurisdiction.

(f) Cooperation would be detrimental to the best interests of the child for any other reason.

(ii) An applicant or recipient who claims to have good cause for refusing to cooperate will be required to (1) provide supporting evidence or (2) provide sufficient information to permit an investigation to determine the existence of one or more of the circumstances specified in paragraph (i).

(iii) There shall be no denial, delay or discontinuance of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements of paragraph (ii). However, the Department may recover amounts paid pending determination if no good cause is found and the applicant continues to refuse to cooperate.

(iv) In cases where good cause has been found there will be a periodic review, in no case less frequently than at each redetermination of eligibility, to determine if circumstances have changed and good cause no longer exists.

(v) The county welfare department will promptly notify the Child Support Bureau, Department of Revenue, of all cases in which it has been determined that there is good cause for refusal to cooperate in establishing paternity and obtaining child support.

(d) Assistance for children whose parents are determined to be ineligible for failure to assign child support rights or cooperate in establishing paternity or in obtaining child support shall be provided in the form of protective payments. The county welfare department will make referrals on child support, paternity, to the Child Support Unit, Department of Revenue, Mitchell Building, Helena, and welfare fraud to the Legal Unit, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601. (History: Sec. 82A-107, 82A-1902, 82-4203, 71-233, and 71-233.1, et.seq., R.C.M. 1947; 45 C.F.R. 220.48 (1937); 42 U.S.C. 602 (1974); NEW, Eff. 11/4/74; 45 C.F.R. 205.50, 232, 234.60, 235.70 (1974);

46-2.10(14)-S11350 SOCIAL AND REHABILITATION SERVICES

P.L. 93-647 adding Part D of Title IV of Social Security Act effective July 1, 1975; EMERG. AMD, Eff. 6/25/75; AMD, Eff. 1/6/76; EMERG. AMD, Eff 1/18/78.)

~~Emerg. Amend. eff. 6/25/75~~

Emeg. Amd eff 1/18/78
obsolete 4/17/78

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

In the matter of the amendment of) NOTICE OF THE AMENDMENT OF
Rule 46-210(18)-S11440 pertaining) RULE 46-210(18)-S11440.
to prescription splitting.)

TO: All Interested Persons

1. On December 23, 1977, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to rule 46-210(18)-S11440 pertaining to prescription splitting at page 1118 of the 1977 Montana Administrative Register, issue number 12.

2. The agency has amended the rule as proposed.

3. No oral or written comments were received. The agency has amended the rule because the Medicaid program is undergoing a financial crisis. This rule is offered to assure that Medicaid patients receive their medication in convenient amounts and to insure against abusive prescription splitting by pharmacists.

Director, Social and Rehabilitation Services

Certified to the Secretary of State February 16, 1978.

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

In the matter of the amendment of rule MAR 46-2.10(18)-S11465, pertaining to temporary prohibition of certain provider fee increases related to medical assistance.	NOTICE OF THE AMENDMENT OF RULE 46-2.10(18)-S11465.

TO: All Interested Persons

1. On December 23, 1977, the state Department of Social and Rehabilitation Services published notice of a proposed amendment to rule 46-2.10(18)-S11465, concerning temporary prohibition of certain provider fee increases related to medical assistance at page 1111 of the 1977 Montana Administrative Register, issue number 12.

2. The agency has amended the rule as proposed.

3. No oral or written comments were received. The agency has amended the rule because Montana's Medicaid program is facing an impending financial crisis which, if not averted, will seriously affect the health and safety of Montana's Medicaid recipients. If the Medicaid program does not reduce its anticipated expenditures, a severe cutback of both eligibility maximums and benefits under the Medicaid program will have to be imposed.

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 15, 1978.

VOLUME NO. 37 OPINION NO. 105

CHILD ABUSE - County powers regarding prevention and treatment.

CHILDREN - County powers regarding child welfare services.

COUNTIES - Powers to expend federal revenue sharing funds; powers to contract with private, non-profit service organizations; and powers concerning the following - prevention and treatment of child abuse; provisions for child welfare services; contracts with humane societies; county museums; and purchase of equipment for rural volunteer fire departments.

COUNTY COMMISSIONERS - Powers to expend federal revenue sharing funds; powers to contract with private, non-profit service organizations; and powers concerning the following - prevention and treatment of child abuse; provisions for child welfare services; contracts with humane societies; county museums; and purchase of equipment for rural volunteer fire departments.

FEDERAL FUNDS - County powers to expend federal revenue sharing funds.

HUMANE SOCIETIES - County powers to contract with local humane societies.

MUSEUMS - County powers regarding the acquisition, establishment, and management of museums.

RURAL VOLUNTEER FIRE DEPARTMENTS - County powers to purchase equipment for.

UNITED STATES - County powers to expend federal revenue sharing funds.

SECTIONS: 10-1031(3), 1103(3), 1203(12), 1222(1), 1234, 1237(1), 1238, 1244, 1245(2), 1300, 1305, 1310, 1315, 1320, 1322; 16-805, 1163, 1164, 2702, 4602, 4606, 4607; 28-601, 602, 603, 605; 47A-7-101, 203, 204; 71-210, 216, 221, 222, 706(a), 709, 714, R.C.M. 1947.

1972 MONTANA CONSTITUTION - Article 5, §11(5); Article XI, §§4(2), 5 and 6.

ATTORNEY GENERAL OPINIONS: Opinion No's. 25, 61, 68 and 89, Volume 37.

HELD: 1. Unless a specific mode or manner of action is mandated by statute, counties may contract with individuals or private organizations, including non-profit service organizations, for the purchase of services or materials the counties are authorized by statute to provide their constituents if the contracts are reasonable and appropriate methods of furnishing services or materials. Counties may use federal revenue sharing funds to purchase any services or materials they could use county tax revenues to purchase.

2. Counties may not make gifts of federal revenue sharing funds or any other county funds to any individual or organization. Any county grant of money to a non-profit service organization must be pursuant to a contract wherein the organization agrees to furnish services or materials the county is empowered to furnish or purchase.

3. Counties which have enacted dog licensing requirements may contract with local humane societies pursuant to Section 16-4607, R.C.M. 1947, for the impoundment and disposition of unlicensed dogs. In addition, counties may contract with local humane societies for kenneling and disposition of animals incidental to the sheriff's performance of his duties as humane officer under Section 16-2702, R.C.M. 1947.

4. Counties have express authority under Section 28-603, R.C.M. 1947, to purchase fire apparatus for volunteer, rural fire crews.

5. Under Section 16-1163 counties may acquire already established museums or collections from private individuals or organizations by purchase, lease or loan and may contract with private organizations for the management and operation of an established county museum. In either case any relationship between a county and a non-profit organization must be a contractual one, the terms of which are left to the reasonable exercise of the discretion of county commissioners. Federal revenue sharing funds may be used in connection with these contracts.

6. Counties may contract with Big Brothers and Sisters organizations to furnish adult companionship, guidance and counseling to needy and troubled children.

7. Counties, jointly with the State Department of Social and Rehabilitation Services, may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services.

17 January 1978

Thomas C. Honzel
Deputy County Attorney
Lewis & Clark County
Courthouse Building
Helena, Montana 59601

Fred Bourdeau
Cascade County Attorney
Courthouse Building
Great Falls, Montana 59401

Gentlemen:

You each have requested my opinion concerning county authority to give or grant federal revenue sharing funds to private, non-profit service organizations. Since each request raises similar issues, I have combined them for purposes of this opinion. Your questions are:

1. May a county give or grant federal revenue sharing moneys to private, non-profit service organizations, and if so under what circumstances?

2. If a county may grant federal revenue sharing moneys to private, non-profit service organizations, must the grant be accompanied by a contractual agreement wherein the organization agrees to provide specific services?

In addition to the foregoing general questions you have requested me to consider the following specific instances of potential funding by a county:

3. May a county give federal revenue sharing funds to a local humane society?

4. May a county use federal revenue sharing funds to purchase fire apparatus and equipment for rural volunteer fire departments?

5. Under what circumstances, if any, may a county give federal revenue sharing funds to a non-profit organization operating a museum open to county residents and the public?

6. May a county give federal revenue sharing funds to "Big Brothers and Sisters," a non-profit service

organization which provides adult companionship and counseling for county youths, including youths referred to it by the welfare department, schools and the juvenile probation office?

7. May a county, in cooperation with the Montana Department of Social and Rehabilitation Services, grant money to a "4-C's" organization, a non-profit service organization which coordinates existing state and local governmental services for children, including services related to prevention and treatment of child abuse and neglect cases?

I

Your first question is answered in part by three recent Attorney General opinions. Those opinions are numbers 25, 61 and 89 of Volume 37, Official Opinions of the Attorney General.

Opinions 61 and 89 considered the permissable purposes for which federal revenue sharing funds may be expended. Opinion 61 concluded:

> Federal revenue sharing funds and payments in lieu of taxes may be spent for any purpose for which local governments may spend or pledge general tax revenues.

As a general rule, federal revenue sharing funds may be used to pay for any services for which general tax revenues may be expended or pledged.

Opinion 25 considered whether a county may grant either federal revenue sharing or general fund moneys to a non-profit corporation operating a museum and art gallery. The opinion held that the proposed expenditure would violate Article V, Section 11(5) of the 1972 Montana Constitution, which prohibits appropriations "for religious, charitable, individual, educational or benevolent purposes" unless made to an organization "under the control of the state." Although Article V, Section 11(5) pertains to legislative appropriations, it was applied by analogy to "subdivisions of the state," including counties. The conclusion reached in Opinion 25 is more directly supported by Section 16-805, R.C.M. 1947, which applies to counties:

> No county must ever give or loan its credit in aid of, or make any donation or grant, by subsidy or

> otherwise, to any individual, association, or corporation * * *.

Both Article V, Section 11(5) and Section 16-805 concern the gift or loan of moneys, involving no return consideration. The proposed expenditure considered in Opinion 25 was a gift since the museum and art gallery was a private one.

Neither Article V, Section 11(5), 1972 Montana Constitution, nor Section 16-805 prohibit counties from appropriating or paying money to individuals or private organizations, profit or non-profit, on an exchange basis. Counties are expressly authorized "to make such contracts * * * as may be necessary to the exercise of its powers." In the context of governmental powers, the word necessary means "reasonable and appropriate" or "reasonably well adopted to the accomplishment" of governmental duties or powers. 37 Official Opinions of the Attorney General, No. 89. Unless some specific mode or manner of execution is mandated by statute, counties may contract with individuals or private organizations, where reasonable and appropriate, for the purchase of services or materials they are authorized by statute to provide their constituents. Cf. Thompson v. Gallatin County, 120 Mont. 263, 270, 184 P.2d 998 (1947), "Whenever a power is conferred upon the board of county commissioners, but the mode in which the authority is to be exercised is not indicated, the board in its discretion may select any appropriate mode or course of procedure."

In several instances counties are expressly authorized to contract with non-profit organizations. For example, Sections 10-1244 and 10-1245(2), R.C.M. 1947, authorize governmental units, including counties, to provide funds, materials, facilities, and services to district youth guidance homes, operated by non-profit corporations and which provide rehabilitation services to delinquent youths and youths in need of supervision. Express provision has been made authorizing contracts with humane societies and the purchase of fire apparatus for volunteer departments. Infra. However, counties are not limited to contracting for services in those instances where statutes expressly authorize such contracts. A county may, unless otherwise limited by statute to some other particular mode and manner of performance, utilize contracts in discharging county powers or duties.

A determination concerning the authority of a county to enter into a particular contract typically involves two inquiries. First, does the county have the power to provide

the service which the non-profit organization will obligate itself to perform? Second, is a contract with a non-profit organization a reasonable and appropriate means of providing that service?

The second inquiry will rarely be troublesome. The choice of a particular mode or manner to accomplish any of its statutory powers or duties is discretionary with the county board of commissioners, subject only to the requirement that it be reasonable. Discretionary decisions of county boards are reviewable only on grounds of fraud or arbitrary and manifest abuse of discretion. State ex rel. Bowler v. Board of County Commissioners of Daniels County, 106 Mont. 251, 258, 76 P.2d 648 (1938). The general rule concerning county contracts is set out in Arnold v. Custer County, 83 Mont. 130, 146-147, 269 P. 396 (1928), "* * * [A] county governing board may contract to have work done that is necessary to its care and management of the business of the county * * * if it is not made by law the duty of some county official to do such work." It will be a rare case in which the use of a contract for services will be held to be an abuse of discretion.

Therefore, the primary inquiry is whether the county has the statutory power to provide the service in question.

Counties with self-government powers have all powers which are not prohibited by the constitution, the statutes of Montana, or their self-government charters. Article XI, Section 6, 1972 Montana Constitution; Section 47A-7-101, R.C.M. 1947; and 37 Official Opinions of the Attorney General, No. 68. Sections 47A-7-203 and 47A-7-204, R.C.M. 1947, place specific limitations upon self-government powers, providing, in general, that local governments which adopt self-government charters are subject to all state laws which concern (a) the election or establishment of local governments; (b) eminent domain and zoning requirements; (c) regulation of budget, financing or borrowing procedures and powers; (d) specific and mandatory duties of local governments or their officers; and (e) areas which have been affirmatively subjected to state or administrative regulation where the exercise of local power would be inconsistent with such regulation. See generally, 37 Official Opinions of the Attorney General, No. 68. Generally, the power to provide social services is not denied.

Counties with general government powers have only those powers which are expressly granted by statute or incidental and necessary to expressly granted powers. Arnold v. Custer

County, supra. In some cases the power to provide a particular service may be express. In others, it may be implied. If provision of the particular service is reasonably well adopted to the accomplishment of an express, statutory power granted counties, then counties have implied power to provide the service. See 37 Official Opinions of the Attorney General, No. 89; State ex rel. Bowler, supra, 106 Mont. at 257-258.

II

In answer to your second question, no money can be paid non-profit service organizations unless accompanied by the organization's agreement to furnish services on behalf of or for the county. In absence of such agreement, the payment would lack reciprocal consideration and amount to a gift.

III

Questions 3 through 7 concern several specific, proposed expenditures. Both Lewis and Clark County and Cascade County have general government powers and the permissability of each of the proposed expenditures must therefore be determined by studying the statutory powers expressly given counties and boards of county commissioners.

The proposed expenditures for Big Brothers and Sisters and for the "4-C's" project involve most difficult statutory analysis. Both proposed expenditures are for children's social services, and there is simply no express statutory authority for counties, independently, to generally provide children or adults with social services. However, the conclusion that county power to provide children's counseling and protective service is implied from various duties the counties have concerning troubled and abused children is a compelling one. The need for extensive analysis in this opinion, as well as in other recent Attorney General opinions rendered with regard to powers of local governments, is created by the ambiguity and incompleteness of current Montana statutes concerning powers of local governments. The deficiencies of the present code illustrate the need for a simplified and comprehensive new local governmental code, particularly in view of the new constitutional provisions on local government made a part of the 1972 Montana Constitution, Article XI. The 1972 Constitution departs from the historical, restrictive approach to powers of local governments, adopting a liberal approach. That approach requires liberal construction of the powers of incorporated cities, towns and counties, Article XI, Section

4(2), 1972 Montana Constitution, and permits local government to adopt self-government charters, Article XI, Sections 5 and 6, 1972 Montana Constitution. Most current statutory provisions were enacted prior to the new Montana Constitution during a strict construction era. While I express no opinion concerning the merits of the proposed, comprehensive local government code introduced in the Forty-fifth Legislature, or any other proposals, House Bill 122 (1977), if it had been enacted, would have clarified and simplified local government powers concerning social services. That Bill would have expressly authorized local governments to provide "human services," including child care, youth, senior citizen, social and rehabilitative services. (Proposed Section 47A-6-103(5), R.C.M. 1947.) A comprehensive and simplified new local government code would erase the current ambiguity of local government statutes and alleviate the need for frequent resort to interpretive decisions of the Attorney General and the courts.

Humane Society.

Chapter 46 of Title 16, R.C.M. 1947, authorizes counties to license dogs, to provide impoundment and to dispose of unlicensed dogs found running at large. Section 16-4607, R.C.M. 1947, grants boards of county commissioners express authority to contract with local humane societies:

> The board of county commissioners may appoint a county pound master and fix the compensation for his services under this act, and otherwise enforce the provisions of this act, or the board of county commissioners may enter into a contract with any humane society or other person, organization or association which will undertake to carry out the provisions of this act regarding the taking up, impounding and killing of dogs, and which shall give a proper bond in whatever amount may be fixed by the board of county commissioners for the faithful performance of the contract. The board of county commissioners may also enter into contracts with municipal corporations for the use by the county or by the municipal corporation of the impounding facilities of the other. (Emphasis supplied.)

Chapter 46, Title 16 is generally a dog licensing act which is only applicable in those counties which have affirmatively enacted dog licensing requirements. Section 16-4602, R.C.M. 1947, provides that a county board of commissioners "may provide for the annual issuance of serially numbered

dog license tags ***." Section 16-4606, R.C.M. 1947, requires county commissioners to provide for impoundment of unlicensed dogs running at large in those counties "where this act applies;" and Section 16-4606, R.C.M. 1947, permits the seizure and impoundment of unlicensed dogs found running at large. Since Chapter 46 does not designate the particular counties to which the act applies and uses the word "may" in Section 16-4602, these provisions of Chapter 46 which concern dog licensing, impoundment and disposition of unlicensed dogs apply only to those counties which, in the discretion of the county commissioners, enact dog licensing requirements. Those counties which have adopted dog licensing requirements may contract with humane societies under Section 16-4607.

An additional source of county authority to contract with a humane society may be found in Section 16-2702, R.C.M. 1947 (subparagraph 4), which imposes a duty upon the sheriff to "perform duties of humane officer within the county with reference to the protection of dumb animals." If kenneling or disposition of animals is necessary in conjunction with performance of those duties, the county may contract with a local humane society to provide those services.

FIRE APPARATUS

Lewis and Clark County has several volunteer fire departments which serve rural areas. These departments have not been established under the provisions of Chapter 20, Title 11, R.C.M. 1947, which provides for organization of fire companies in unincorporated villages and towns and the creation of fire protection districts. However, rural volunteer fire departments need not be organized under Chapter 20, Title 11, to be eligible for grants of funds or equipment. Separate, express provision has been made for rural volunteer departments in Section 28-601 through 28-605, R.C.M. 1947. Section 28-602, R.C.M. 1947, provides that a county governing body may provide for the organization of volunteer, rural fire crews for the purpose of protecting range, farm, and forest lands within the county. Section 28-603, R.C.M. 1947, expressly authorizes county boards to appropriate funds to purchase fire equipment, providing in relevant part:

> The county governing body is authorized to appropriate funds for the purchase, care, and maintenance of fire-fighting equipment or for the payment of wages in prevention, detection, and suppression of fires, or if the general fund is budgeted to the full limit, the county governing body may at any time fixed by law for

> levy and assessment of taxes levy a tax at such rate as in their judgment will be necessary to raise such needed sum not to exceed $15,000.

The $15,000 limitation only applies where the general fund is already budgeted to the full limit and a special tax levy is necessary to raise funds for the described purposes. The proposed expenditure is a permissable one.

MUSEUM

County powers concerning museums are set forth in Sections 16-1163 and 16-1164, R.C.M. 1947. Section 16-1163 provides:

> The board of county commissioners of each county of the state, in addition to all other powers now conferred upon them, shall have authority to establish or acquire museums, and collections of exhibits, and articles, matters and things to be included in or added to such museums and collections. The word "museums" for the purposes of this act shall mean buildings, or parts of buildings, of which a principal purpose is the exhibition of objects of historical interest or of interest in one or more of the arts and sciences.

The use of the words "establish or acquire" precludes county subsidy of private museums. However, it neither prohibits acquisition of a museum or collection from a private organization nor does it preclude counties from contracting with private organizations for services in connection with establishment or management of county museums. The words "acquire" and "establish" have commonly understood meanings. "Acquire" means to get or gain possession of. "Establish" means to set up or create. Both words are broad enough to comprehend not only outright purchases but leases, rentals, donations and loans. It is a common practice of museums, for example, to "acquire" exhibits, collections, and individual works of art on loan from donors who do not wish to relinquish ownership but at the same time desire to share their art works with the public. In construing statutes, words must be given their plain and ordinary meanings, unless the context makes it apparent that a different meaning was intended, State ex rel. Daly v. Montana Kennel Club, 144 Mont. 377, 381, 396 P.2d 605 (1967); and in case of Section 16-1163, R.C.M. 1947, it is not apparent that the Legislature intended to use the words "acquire" and "establish" in any other manner than their broadest and commonly understood sense. Since the museum provisions do not mandate a particular mode or method of acquisition or establishment, county commissioners have broad discretion in

determining the manner of proceeding. County boards may acquire already established museums or collections not only by outright purchase but by lease or loan involving private organizations. Similarly, once a museum has been established, a county may contract with a private organization for its management and operation. In either case the relationship between a county and a private organization must be a contractual one, the terms of which are left to the reasonable discretion of the county commissioners and through which the county provides a museum or collection for its constituents. Federal revenue sharing funds may be used in connection with these contracts.

BIG BROTHERS AND SISTERS

Lewis and Clark County has submitted the question concerning county authority to grant federal revenue sharing funds to local Big Brothers and Sisters organizations. In conjunction with its request, the county has furnished the following information.

Big Brothers and Sisters is a non-profit, service organization which provides "adult friends" to youths in need of adult companionship and guidance. At present, approximately one hundred youths between the ages of five and sixteen in Lewis and Clark County are matched with adult volunteers; an additional one hundred youths are on a waiting list. Youths are referred to the program from the county welfare department, schools, and the juvenile probation office. It is the opinion of the county commissioners that the program has successfully interrupted and reversed anti-social development patterns of some youths and therefore reduced the incidence of juvenile offenses. In addition to advancing the general welfare of county youths in the program, the commissioners are of the opinion that the program has prevented some youths from developing into future youth offenders. This has served to reduce expense the county would otherwise have incurred for maintenance of youths if adjudicated in need of supervision, delinquent, or dependent. Maintenance of delinquent youths and youths in need of supervision in structured programs can cost the county up to $1,200 per individual child, per month.

The services provided by Big Brothers and Sisters fall generally within the catagory of counseling and guidance of needy and troubled children. Provision for such services is reasonably related to the discharge of several, express statutory duties and powers granted counties with regard to the welfare and protection of children.

The welfare and protection of children is the general concern of the State, primarily through the Department of

Social and Rehabilitation Services and the Department of Institutions, and the counties, which share responsibilities for child welfare. Counties' duties and powers with respect to child welfare and protection are found principally in Chapter 12 of Title 10, R.C.M. 1947, the "Montana Youth Court Act;" Chapter 13 of Title 10, R.C.M. 1947, pertaining to the protection of abused, neglected and dependent children; and Chapters 2 and 7 of Title 71, R.C.M. 1947, as it pertains to provision for child welfare services.

The Montana Youth Court Act directly burdens counties with financial responsibility for the care and rehabilitation of youth offenders. Youth offenders are classified as "delinquent youths," who have been adjudged guilty of committing offenses which if committed by adults would constitute crimes or who have violated probation, Section 10-1203(12), R.C.M. 1947, and "youths in need of supervision," who have been adjudged guilty of an offense which if committed by adults would not constitute a crime or who are incorrigible or habitually truant, Section 10-1103(13), R.C.M. 1947. Youth offenders are subject to a number of disposition alternatives, including probation, placement in a foster home or district youth guidance home, and special care, treatment or evaluation ordered by the Youth Court. See Section 10-1222(1), R.C.M. 1947. Counties are burdened with the cost of paying for youth probation services, Section 10-1234, R.C.M. 1947; the cost of maintaining shelter, care and detention facilities, Section 10-1237(1), R.C.M. 1947; and the cost of supporting any youth offender committed to the custody of any private or public agency, Section 10-1238, R.C.M. 1947. In discharging its financial duties, the county is not limited to "paying the bills." As stated in Arnold v. Custer County, supra, 83 Mont. at 146 (quoting 15 C.J., p. 457);

> * * * [A county board] must necessarily possess an authority commensurate with its public trusts and duties. Therefore, it possesses inherent authority to perform acts to preserve or benefit the corporate property of the county entrusted it.

Prevention of delinquency and youth offenses is as much a part of youth law enforcement as it pertains to youth, as the detection, supervision, and rehabilitation of youth offenders, and is reasonably related to the discharge of the counties' financial duties.

Counties' responsibilities for the care and treatment for abused, neglected and dependent children are similar to their responsibilities under the Youth Court Act. Counties must pay one-half the cost of the support of dependent and

neglected children sheltered in foster homes or private institutions. Section 10-1320, R.C.M. 1947. Pursuant to Sections 71-216, 71-221 and 71-714, R.C.M. 1947, counties, through county welfare boards, also administer local child welfare services, which are defined by Section 71-706(a), R.C.M. 1947, as:

> Child welfare services mean: The establishing, extending and strengthening of child welfare services *** for the protection and care of homeless, dependent and neglected children and children in danger of becoming delinquent.

These provisions are important in the present context with respect to "dependent" youths, who are defined as including those youths who have no proper guidance to provide for their necessary physical, moral, and emotional well-being, Section 10-1031(3), R.C.M. 1947. Adult counseling and guidance in moral and emotional matters may fill in for home deficiencies which in some cases might otherwise require formal interventions under the child neglect and dependency provisions of Chapter 13, Title 10, R.C.M. 1947, and the placement of youths in foster home facilities at county expense.

I therefore conclude that counties have implied powers to provide counseling and guidance services for children and to contract with Big Brothers and Sisters to furnish such services.

4-C's

The question concerning funding of a local "4-C's" project was also submitted by Lewis and Clark County. The County and the Department of Social and Rehabilitation Services (SRS) have furnished the following information.

"4-C's" is a non-profit organization whose principal function is the coordination of existing state and local services for children. "4-C's" is also involved in the evaluation and development of services for children; the prevention and treatment of child abuse and neglect cases through educational and training services and supportive assistance for child abuse treatment programs; the providing of training programs in child welfare service areas; and the detection of disabilities among children. Most "4-C's" activities are organizational in nature, primarily involving community coordination of local and state child service providers.

Several counties, including Lewis and Clark County, plan to grant financial support to the local "4-C's" projects.

County funding will be a small portion of a larger grant made to "4-C's" projects by SRS and utilizing federal funds. SRS and each involved county will jointly purchase child welfare services from local "4-C's" projects; the purchase will involve written agreements. In Lewis and Clark County, county funds are to be used exclusively for child abuse and neglect services. Approximately one-half of the funds are earmarked for purposes of organizing and assisting a "Parents Anonymous" program, a self-help group for parents who have abused or neglected their children. The remaining funds are to be used for other informational and organization services for the prevention, detection and treatment of child abuse and neglect.

The proposed expenditure is a permissible one. As noted with regard to counseling and guidance services provided children by Big Brothers and Sisters, counties are burdened with much of the financial responsibility for the care of children found to be dependent or neglected. E.g., Section 10-1320, R.C.M. 1947. The county attorney is responsible for prosecution of petitions alleging child abuse, neglect or dependency, Sections 10-1305 and 10-1310, R.C.M. 1947, and prosecuting criminal actions against abusive parents, Section 10-1322, R.C.M. 1947. The county welfare department shares responsibility with SRS for providing protective services for abused, neglected and dependent children. Section 10-1315, R.C.M. 1947. Although Chapter 13 of Title 10, R.C.M. 1947, dealing with child neglect and abuse, grants county officials and SRS express authority to officially intervene in actual child abuse cases, both county and state powers and responsibilities concerning child abuse are much broader than the formal actions authorized in that chapter. Section 10-1300, R.C.M. 1947, declares the official policy of the State concerning children in broad terms.

> It is hereby declared to be the policy of the state of Montana:
> (1) to ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;
> (2) to compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;
> (3) to achieve these purposes in a family environment whenever possible; and
> (4) to preserve the unity and welfare of the family whenever possible.

Prevention and treatment of child abuse and neglect outside the confines of formal child abuse and neglect proceedings are reasonably adapted to serve these purposes.

The joint responsibility for child welfare shared by counties with SRS under Chapter 13 of Title 10 is carried over into general child welfare provisions of Chapters 2 and 7 of Title 71, R.C.M. 1947. SRS is obligated to establish, strengthen and supervise child welfare services. Sections 71-210 and 71-709, R.C.M. 1947. County boards of welfare administer local delivery of child welfare services and social services programs. Sections 71-216, 71-221 and 71-714, R.C.M. 1947. In addition to the required county expenditure for general relief and administrative costs of county welfare departments, Section 71-222, R.C.M. 1947, expressly authorizes counties to pay their "proportionate share of any other public assistance activity that may be carried on jointly by the State and the county." The term "public assistance" includes "any type of monetary or other assistance furnished under this title (Title 71) to a person by a state or county agency * * *," Section 71-201.1(2), R.C.M. 1947, a definition broad enough to include social services.

It is therefore my opinion that the county may, in cooperation with SRS, contract for the proposed services to be furnished by the "4-C's".

THEREFORE, IT IS MY OPINION:

1. Unless a specific mode or manner of action is mandated by statute, counties may contract with individuals or private organizations, including non-profit service organizations, for the purchase of services or materials the counties are authorized by statute to provide their constituents if the contracts are reasonable and appropriate methods of furnishing services or materials. Counties may use federal revenue sharing funds to purchase any services or materials they could use county tax revenues to purchase.

2. Counties may not make gifts of federal revenue sharing funds or any other county funds to any individual or organization. Any county grant of money to a non-profit service organization must be pursuant to a contract wherein the organization agrees to furnish services or materials the county is empowered to furnish or purchase.

3. Counties which have enacted dog licensing requirements may contract with local humane societies pursuant to Section 16-4607, R.C.M. 1947, for the impoundment and disposition of unlicensed dogs.

In addition, counties may contract with local humane societies for kenneling and disposition of animals incidental to the sheriff's performance of his duties as humane officer under Section 16-2702, R.C.M. 1947.

4. Counties have express authority under Section 28-603, R.C.M. 1947, to purchase fire apparatus for volunteer, rural fire crews.

5. Under Section 16-1163 counties may acquire already established museums or collections from private individuals or organizations by purchase, lease or loan and may contract with private organizations for the management and operation of an established county museum. In either case any relationship between a county and a non-profit organization must be a contractual one, the terms of which are left to the reasonable exercise of the discretion of county commissioners. Federal revenue sharing funds may be used in connection with these contracts.

6. Counties may contract with Big Brothers and Sisters organizations to furnish adult companionship, guidance and counseling to needy and troubled children.

7. Counties, jointly with the State Department of Social and Rehabilitation Services, may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 106

MENTAL HEALTH - Involuntary Commitment;
COMMITMENT - Voluntary, Avoidance of Involuntary Procedure;
JURISDICTION - Involuntary Commitment Proceedings;
SECTIONS - 38-1303; 38-1305, R.C.M. 1947.

HELD: A person subject to court jurisdiction under a petition for involuntary mental commitment may not avoid the involuntary procedure solely by making an application for voluntary admission under Section 38-1303, R.C.M. 1947.

25 January 1978

Keith D. Haker
County Attorney
Custer County Courthouse
Miles City, Montana 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

> May a person who is alleged to be a seriously mentally ill person in a petition for involuntary commitment avoid the involuntary commitment by committing himself under the provisions of Section 38-1303, R.C.M. 1947?

Section 38-1305 contains the procedures for involuntary commitment of persons who are seriously mentally ill. A petition is filed in the district court by the County Attorney. Among other provisions the petition must contain a statement of facts including the allegation of mental illness. Upon the filing of the petition, the Clerk of the Court shall immediately notify a judge who must immediately make a determination, based on the petition, that probable cause exists that the person is seriously mentally ill. If the court determines that probable cause does exist, the Court shall order an examination of the person and a hearing shall be held within five days to determine the merits of the petition. Section 38-1305(7) provides that the trial shall be governed by the Montana Rules of Civil Procedure.

Section 38-1303, R.C.M. 1947, provides in pertinent part:

> Voluntary Admission--Cost of Admission (1) Nothing in this chapter may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person...
>
> (3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than five days, excluding week ends and holidays, past his written request for release.

Your question is whether by virtue of the above-quoted provisions a person may avoid the involuntary commitment procedures by making application for voluntary admission under that section.

Pursuant to Rule 4, Montana Rules of Civil Procedure, the Court acquires personal jurisdiction upon the filing of an action and service upon the defendant. Sowerwine v. Sowerwine, 145 Mont. 81, 399 P.2d 233 (1965). Nothing in Chapter 38 provides that the court loses jurisdiction upon application by the defendant for voluntary admission. It is my opinion that the court retains jurisdiction over the question of involuntary commitment irrespective of an application for voluntary admission. Cf. In re the Matter of G. 26 Or.App. 197, 552 P.2d 574 (1976).

The statutes pertinent to this question were amended by the 45th Montana Legislative Session. Prior to 1977, Section 38-1305 read in pertinent part:

> The petition shall be dismissed if the respondent accepts voluntary treatment or admission to a mental health facility approved by the professional person conducting the examination.

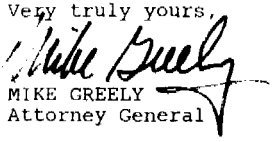
That provision was repealed by Laws of Montana (1977), Chapter 546, Section 5. At this time there is not a provision that requires dismissal of the petition upon application for voluntary treatment. In the construction of statutory amendments, it is presumed that the legislature, in passing the amendment, intended to make some change in existing law, and therefore endeavor should be made to give effect to the amendment. Department of Revenue v. American Smelting and Refining Co., 34 St Rprt. 603 (1977); Pilgeram v. Hass, 118 Mont. 431, 167 P.2d 339 (1946). It is my

opinion that it was the intent of the legislature to remove the requirement that a petition for involuntary commitment be dismissed whenever the individual involved makes application for voluntary treatment. However, the parties must keep in mind the purpose of the chapter as outlined in Section 38-1301. A person should be placed in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care.

THEREFORE IT IS MY OPINION:

> A person subject to court jurisdiction under a petition for involuntary mental commitment may not avoid the involuntary procedure solely by making an application for voluntary admission under Section 38-1303, R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

MG/MMcG/ar

VOLUME 37 OPINION NO. 107

BOARD OF REAL ESTATE - Public disclosure of records.
CONSTITUTIONS, RIGHT TO KNOW - Public disclosure of Board of Real Estate records.
LICENSES, OCCUPATIONAL AND PROFESSIONAL - Public disclosure of Board of Real Estate records.
REAL ESTATE AGENTS, DEALERS AND SALESMEN - Public disclosure of Board of Real Estate records.
CONSTITUTION OF MONTANA - Article II, Section 9.
SECTIONS - 66-1945 and 82-3402, R.C.M. 1947.

HELD: 1. The Board of Real Estate, when requested, must disclose the status of any real estate licensee, whether any disciplinary action has been taken against that individual, and, if so, the reason for the disciplinary action. Public access to information relating to complaints or to allegations is left to the discretion of the Board, within the guidelines of this opinion.

2. All minutes of the Board of Real Estate, except those minutes of a meeting closed by the presiding officer pursuant to Section 82-3402, R.C.M. 1947, must be open to public inspection.

3. Public access to the other files on individual licensees is left to the discretion of the Board of Real Estate within the guidelines of this opinion.

27 January 1978

Robert T. Cummins
Department of Professional and
Occupational Licensing
Board of Real Estate
LaLonde Building
Helena, Montana 59601

Dear Mr. Cummins:

You have requested my opinion concerning public accessibility to the following records of the Board of Real Estate: (1) files concerning complaints against real estate licensees, (2) minutes of the Board of Real Estate, and (3) other files concerning individual real estate licensees.

Article II, Section 9, Constitution of Montana 1972 states:

> No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies, or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

This constitutional provision provides public access to government documents and operations. However, this right to know is not absolute. When the demands of individual privacy clearly exceed the merits of public disclosure, government documents and operations are not subject to public disclosure. The Constitutional Convention Bill of Rights proposal on the right to know proclaimed:

> The committee intends by this provision that the right to know not be absolute. The right of individual privacy is to be fully respected in any statutory embellishment of the provision as well as the court decisions that will interpret it. To the extent that a violation of individual privacy outweighs the public right to know, the right to know does not apply. Montana Constitutional Convention, Bill of Rights Proposal, No. VIII, p.23. (Emphasis supplied.)

The right of individual privacy is recognized by Art. II, Section 10, Constitution of Montana 1972, as follows:

> The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

The 1972 Montana Constitution applies a balancing test between the public's right to know and the demands of individual privacy when concerned with public accessibility issues.

This test is found in our Open Meeting Law, Section 82-3402, R.C.M. 1947, which requires all meetings of public and governmental bodies to be open to the public. As Section 82-3402 states in part:

> ... Provided, however, the presiding officer of any meeting may close the meeting during the time

> the discussion relates to a matter of individual privacy, and then, if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure.

A proper application of this balancing test involves the following steps: (1) determining whether a matter of individual privacy is involved, (2) determining the demands of that privacy and the merits of publicly disclosing the information at issue, and (3) deciding whether the demand of individual privacy clearly outweighs the demand of public disclosure.

The Board of Real Estate has the duty to apply this test and make the ultimate decision. Art. II, Section 9, Constitution of Montana 1972, makes no reference to the responsibility for making this decision. Nevertheless, Section 66-1927(4), R.C.M. 1947, provides that the records of the Board are open to public inspection under rules prescribed by the Board. Section 82-3402, R.C.M. 1947, places the discretion to close a meeting in the hands of the presiding officer. If he determines that a meeting relates to a matter of individual privacy, which clearly exceeds the merits of public disclosure, he may close the meeting and deny public inspection of those particular minutes under Section 82-3403, R.C.M. 1947.

This initial decision by the Board is subject to judicial review at the insistence of an aggrieved party. Section 82-3406, R.C.M. 1947, provides judicial review under the Open Meeting Law and Art. II, Section 9 of the 1972 Montana Constitution could be asserted in a declaratory judgment action. In order to provide an accurate basis for possible litigation the Board must require all requests for information be in writing and be specific. In turn, any grants or denials of access given by the Board must be in writing and specifically state the reasons therefor.

The right of privacy is a developing one and not precisely defined. The term "right of privacy" is commonly used to refer to a sphere of personal autonomy which is protected from governmental interference. The United States Supreme Court has recognized certain zones of privacy, which are constitutionally protected: Loving v. Virginia, 388 U.S. 1 (1967) (marriage); Skinner v. Oklahoma, 316 U.S. 535 (1942) (procreation); Griswold v. Connecticut, 381 U.S. 479 (1965); Einstadt v. Baird, 405 U.S. 438 (1972) (contraception);

Pierce v. Society of Sisters, 260 U.S. 510 (1925) (child rearing); Stanley v. Georgia, 394 U.S. 557 (1969) (the home). The Montana Supreme Court has not defined the term "demand of individual privacy" found in Art. II, Section 9, Constitution of Montana 1972. However, this constitutional provision is concerned with privacy in a narrower sense, which is termed "disclosural privacy." "Disclosural privacy" refers to an individual's ability to choose for himself the time and circumstances under which, and the extent to which, his attitudes, beliefs, behavior and opinions are to be shared with or withheld from others. O. Ruebhausen and O. Brim, Jr., Privacy and Behavioral Research, 65 Col. L. Rev. 1184, 1189 (1965). The Board must recognize a demand of individual privacy, regardless of degree, when the information at issue reveals facts about an individual's attitudes, beliefs, behavior, and any other personal aspect of that individual's life.

Once a demand of individual privacy has been recognized, the degree of infringement on that demand must be determined. The degree of infringement will vary according to the type of information sought, e.g., the name of an individual as compared to his medical history. The extent of the state interest necessary to justify public disclosure will vary with the degree of individual privacy involved.

In the merits of public disclosure, two interests are involved. These interests are the government's need for information and the public's interest in access to government records.

All individuals share an interest in effective government. Confidentiality helps encourage full and honest disclosure of information essential to effective government. The Board may have a reasonable concern that licensees and complainants may be hesitant to come forward with needed information should all records of the Board be open for public inspection.

On the other hand, the public has a valid interest in knowing what government is doing. The government cannot carry on its activities in secret and, at the same time, remain accountable to the public. In the case of the Board of Real Estate, the Board's function is to license and regulate the members of the real estate profession to insure qualified assistance to the public seeking help from real estate licensees. For this reason, dissemination of information compiled by the Board plays an important role in

carrying out the Board's function. This is reflected in the legislature's mandate that the Board publish an annual directory of licenses, including a list of all licenses suspended or revoked, and any other information of interest to real estate licensees and the public. Section 66-1945, R.C.M. 1947.

Recognizing the public's interest in an open government, recent federal decisions concerning the Freedom of Information Act, 5 U.S.C. §1002 (1946) (hereafter cited as FOIA) are relevant. These decisions indicate that two different definitions of "public interest" have been applied when considering the balancing test between privacy and the public's right to know. The first definition is found in Getman v. NLRB, 450 F.2d 670 (D.C. 1971), stay denied 404 U.S. 1204 (1971). Two law professors requested from the NLRB names and addresses of employees eligible to vote in certain union elections for the purpose of studying union election campaigns. The Getman court, considered the purpose or motive of the requesting party in defining public interest, stating that the privacy exemption under the FOIA required a balancing of the employees' right of privacy and the public interest purpose of the professors' study. A second approach is exemplified by Robles v. Environmental Protection Agency, 484 F.2d 843 (4th Cir. 1973). The Robles court specifically rejected the Getman approach and set down a rule of all or nothing disclosure. The Robles court reasoned that disclosure under the FOIA never was intended to depend upon the interest or lack of interest of the party seeking disclosure. Therefore, the Robles approach disregards the purpose or motive of the requesting party.

This second approach, illustrated in Robles, is the better of the two for Montana. Neither our Constitution nor our Open Meeting Law suggest that an individual must display a certain reason in order to inspect government operations and records. Both of these provisions in our law are concerned with the necessity of an open government and the public's ability to observe how its government operates regardless of each person's subjective motivation.

When applying the final step of balancing the merits of public disclosure and the demands of individual privacy, the general rule must be that government records are open to the public, with the burden placed upon the custodian of the records to affirmatively show the demands of individual privacy clearly outweigh the merits of public disclosure. Unless the legislature has enacted a policy which declares

the right of privacy superior, public disclosure is compelling. Art. II, Section 9, must be read together with Art. II, Section 10, Constitution of Montana 1972, and both given effect. The latter clearly addresses all types of invasions of privacy, while the former addresses only that type of invasion which concerns us here, invasion of privacy through disclosure. Art. II, Section 9 governs the questions of public disclosure of government records. The Board must begin with the general rule that all of its records, minutes, and files are open to the public. The burden is upon the Board to show that the demands of individual privacy clearly outweigh the merits of public disclosure.

The specific questions in your request concern three types of records: (1) complaint files, (2) minutes of the Board's meetings, and (3) other files concerning individual licensees.

(1) Public disclosure of complaints against licensees has not been addressed by the Montana Supreme Court, but the Minnesota Supreme Court did face this issue in Minneapolis Star and Tribune Co. v. State, 163 N.W.2d 46 (Minn. 1968). In that case, a newspaper brought an action to inspect records of the State Board of Medical Examiners relating to disciplinary actions taken against certain doctors. The Minnesota court held that the newspaper was entitled as a member of the public to ascertain the status of any doctor within the jurisdiction of the Board, whether any disciplinary action had been taken against a particular doctor, and, if so, the reason for such disciplinary action. However, the court went on to say that the newspaper did not have a right to inspect records which contained charges, investigations, reports and discussions between members of the Board or their employees, and complaints, or allegations which were uncorroborated and unsupported. The latter could unjustly injure the character and reputation of innocent persons both in and out of the medical profession. The court held that the Board had the discretion to withhold its source of information where, in its judgment, a disclosure would violate a privileged or confidential communication from patients and informants.

A solution, similar to the one reached in the Minnesota case, is compatible with the Montana law previously discussed. Section 66-1945, R.C.M. 1947, requires the Board to make public an annual directory of licenses, indicating which licenses have been suspended or revoked, and including

any other information of interest to the public. The protection afforded the public or other licensees by disclosing disciplinary action taken by the Board against any individual licensee and the reason for such disciplinary action clearly outweighs any demand of individual privacy asserted by the guilty party.

The Board should have the discretion to deny public access to those records containing complaints in the investigatory stages, allegations which are uncorroborated and unsupported, and the source of a complaint or information compiled during the investigation. The ability to exercise discretion in these areas enables the Board to operate efficiently by insuring full and honest disclosure of needed information and avoid injury to the character or reputation of innocent persons both in and out of the real estate profession.

(2) Public disclosure of the Board's minutes is governed by the Open Meeting Law, specifically Section 82-3403(1), R.C.M. 1947, which states:

> Appropriate minutes of all meetings required by 82-3402 to be open shall be kept and shall be available for inspection by the public. (Emphasis supplied.)

All minutes of the Board must be open for public inspection unless they relate to a meeting closed by the presiding officer pursuant to Section 82-3402, R.C.M. 1947. His decision to close a meeting must be made with the balancing test previously discussed in mind and with the appropriate written explanation.

(3) Public access to the other files on individual licensees is left to the Board's discretion. The balancing test previously discussed should be applied with relation to each type of information sought. The Board may wish to inform licensees that the information required by the Board will be made public, making certain information optional with the understanding that any confidentiality is being waived by the licensee. The Board should give reasonable notice to persons involved if they decide public disclosure is necessary and outweighs the right of individual privacy in a given case.

In light of Art. II, Section 9 of the 1972 Montana Constitution, the Board should make every reasonable effort to meet

a request for public disclosure. The Board can achieve this by screening records and deleting personal references when the demands of individual privacy require such deletion.

As a final note, a voluntary and intelligent waiver of the right of privacy on the part of any individual would negate the concern for Art. II, Sections 9 and 10. Furthermore, Section 82-3402, R.C.M. 1947, states in part:

> ... The right of individual privacy may be waived by the individual about whom the discussion pertains, and, in that event, the meeting shall be open. (Emphasis supplied.)

Therefore, public inspection of all of the Board's records is mandatory when the right of individual privacy has been waived.

THEREFORE, IT IS MY OPINION:

1. The Board of Real Estate, when requested, must disclose the status of any real estate licensee, whether any disciplinary action has been taken against that individual, and, if so, the reason for the disciplinary action. Public access to information relating to complaints or to allegations is left to the discretion of the Board, within the guidelines of this opinion.

2. All minutes of the Board of Real Estate, except those minutes of a meeting closed by the presiding officer pursuant to Section 82-3402, R.C.M. 1947, must be open to public inspection.

3. Public access to the other files on individual licensees is left to the discretion of the Board of Real Estate within the guidelines of this opinion.

Very truly yours,

MIKE GREELY
Attorney General

MG/RA/br

VOLUME 37 OPINION NO. 108

MOTOR VEHICLES - Proper school district for taxation;
PERSONAL PROPERTY - Proper school district for taxation;
SCHOOL DISTRICTS - Proper school district for taxation of personal property;
TAXATION AND REVENUE - Proper school district for taxation of personal property;
TITLE 84-406 and 53-114;
ATTORNEY GENERAL'S OPINIONS - VOL. 17, NO. 215; VOL. 18, NO. 189; VOL. 32, NO. 15.

HELD: Where personal property is owned by the resident of one school district but used and kept the majority of the time by a resident of another school district the proper tax situs is the school district where it is habitually kept when at rest.

27 January 1978

Thomas A. Budewitz
Broadwater County Attorney
Townsend, Montana 59644

Dear Mr. Budewitz:

You have requested my opinion on the following question:

> Whether a motor vehicle owned by a resident of one school district and used by a resident of another school district is properly assessed for taxes by the district of the owner's residence or that of the district of the user.

The facts stated in your request are: a resident of one school district within your county owns jointly, with his wife, a motor vehicle. The vehicle is used by a daughter who lives and works in another school district. The daughter uses the car in both school districts but it is used and kept the majority of the time in the district in which she lives.

The applicable section of the taxation laws dealing with assessment of property is 84-406(3), R.C.M. 1947, which reads in pertinent part:

> (3)(a) the department [of Revenue] or its agents must ascertain and assess all motor vehicles...in each county...and the same shall be assessed to the persons by whom owned or claimed or in whose possession or control such vehicle was at 12 midnight of January 1 or the anniversary registration date thereof, whichever is applicable, in each year.

The answer is found in Valley County v. Thomas, 109 Mont. 345, 92 P.2d 345 (1939) and a previous opinion by this office, Vol. 32, Opinion No. 15, Opinions of the Attorney General.

Valley County, supra, construed the predecessor to Section 53-114, R.C.M. 1947. The current section uses essentially the same language construed in Valley County:

> Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned..file, or cause to be filed, in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration upon a blank form to be prepared and furnished by the registrar of motor vehicles. The application shall contain:
>
> (a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable. (Emphasis supplied).

This statute contemplates a difference between an owner's domicile and the tax situs of his property.

Valley County, supra, at 387 said:

> Tangible personal property is usually considered to be owned and taxable where it is habitually kept when at rest, rather than where it is temporarily kept or where it is used during the working hours of the day.

Your question is answered by the Attorney General's opinion cited above:

> In the Montana case, Valley County v. Thomas, (supra) the court held that the situs of motor vehicles for the purpose of licensing and taxation

> is the habitual situs of rest as distinguished from its temporary situs or its situs of employment.... While this habitual situs is usually the residence or domicile of the owner, under the proper set of facts the permanent or habitual situs might be somewhere else....
>
> For example, a farmer might own a vehicle which he keeps at his home in one county during the winter and then at his farm in another county during the summer. Assuming that he keeps his vehicle at home for more than six months, it would be taxable in that county not in the county where the farm is located....
>
> Once determination is made as to which county should properly tax and license the motor vehicle, a determination of which school district should receive the tax would be made in the same manner.

The holding is stated as follows:

> Therefore, it is my opinion that you correctly stated the rule when you said "between school districts, vehicles should be taxed in the school district in which they are kept a majority of the time. As between counties, motor vehicles should be licensed and taxed in the same manner. Thus, under the proper circumstances, the residence of the owner may not be the determining factor. (Emphasis supplied).

In another Attorney General's Opinion, Vol. 18, No. 189, it was said:

> As a factual matter automobiles are ordinarily used and situated in the county of the owner's residence and domicile...but where the automobile has a business situs or is habitually used in another county, it is assessed, taxed and licensed therein.

And in still another, Vol. 17, No. 215:

> In determining where the automobile is situated...the actual situs of the property shall govern. The old rule, as declared by the maxim, "mobilia sequuntur personam," has not been adopted

> by the state of Montana. The rule used to be that the situs of the property was presumed to be at the domicile of the owner. Such rule has not been adopted by our state legislature, nor approved of by our court.
>
> A person may be domiciled in one county and his automobile and other property may be situated in another county. The county where the automobile is situated, regardless of the owner's domicile, shall be the determining criterion. (Emphasis supplied).

While the latter two opinions dealt with the question of the proper county for taxation purposes there is no distinction between the proper county and the proper school district in the present context.

THEREFORE, IT IS MY OPINION:

> Where personal property is owned by the resident of one school district but used and kept the majority of the time by a resident of another school district the proper tax situs is the school district where it is habitually kept when at rest.

Very truly yours,

MIKE GREELY
Attorney General

JMA/so

VOLUME 37 OPINION NO. 109

INSURANCE - Schools, property and liability insurance;
SCHOOLS AND SCHOOL DISTRICTS - Insurance;
SCHOOLS AND SCHOOL DISTRICTS - Taxation, levy for liability insurance;
TAXATION - Special levy for school district's purchase of liability insurance;
TAXATION - Elections, not required for levy for liability insurance of school districts;
SECTIONS 72-8212; 75-6806; 75-6806(1); 75-6923; 82-4303(2); 82-4305(2); 82-4306(3); 82-4307(2), (2) (repealed 1974); 82-4309; 82-4310; 82-4322.1;
ARTICLE II, SECTION 18, 1972 MONTANA CONSTITUTION 35 OP. ATT'Y GEN. NO. 44 (1973).

HELD: 1. The annual property tax provided by Section 82-4309 may be used to fund all policies of insurance required or permitted by law. This opinion reverses the contrary language in 35 OP. ATT'Y GEN. NO. 44 (1973)

2. The levy provided by Section 82-4309 does not require an election. The school trustees may authorize the levy upon determining that such levy is in the best interests of the school district.

30 January 1978

Jack Yardley
County Attorney
Park County
Livingston, Montana 59047

Dear Mr. Yardley:

You have requested my opinion on the following questions:

1. Does Section 82-4309, R.C.M. 1947, which permits school districts to "levy an annual property tax in an amount necessary to fund the premium for insurance...as herein authorized" extend to the funding of all types of insurance or merely liability insurance?

2. Does such levy require an election?

You state disagreement with a previous Attorney General's opinion answering your first question. The opinion held that:

> [t]he annual property tax permitted under section 82-4309 may be used to pay premiums on liability insurance, but may not be used to pay premiums on property insurance of school districts.

35 OP. ATT'Y GEN., No. 44 (1973). I have reviewed that opinion and the 1977 amendments to the Montana Comprehensive State Insurance Plan and Torts Claim Act, Sections 82-4301 to 4335. I am of the opinion that the 1977 amendments indicate the prior opinion construed the act too narrowly.

The act permitted political subdivisions to levy an annual property tax "to pay the premium for insurance 'as herein authorized.'" Laws of Montana (1973), ch. 380, sec. 9 (located at §82-4309, R.C.M. 1947 (Supp. 1975)). The "authorization" in turn was located in section 6 of the act (§82-4306, R.C.M. 1947 (Supp. 1975)) which provided "[a]ll political subdivisions of the state shall have the authority to procure insurance under this act" (emphasis added). "Insurance" was not defined.

The 1973 opinion construing "insurance" to mean liability insurance was based on the premise that the act authorized insurance coverage only for occurrences for which the state or political subdivisions may be held liable, or "liability" insurance. 35 OP. ATT'Y GEN. No. 44. This conclusion was reached because the act defined "personal injury," "property damage," and "claim" in terms of tort liability. Id. This was a narrow reading of the statutory language and considered only the tort claims aspects to which the definitions related.

A section of the act was apparently overlooked. The 1977 amendments indicate the term "insurance" should be construed generally.

The law as originally enacted set minimum policy limits for both political subdivisions and the state. Laws of Montana (1973), ch. 380, sec. 7. Though this section was subsequently repealed (Laws of Montana (1974), ch. 143, sec. 2), it is evidence of the legislature's intention regarding the scope of the act.

Section 7 provided in relevant part:

> Every policy ... of insurance purchased by a political subdivision, or the state department of administration for the state as permitted under the provisions of this act shall provide:
> (1) With respect to casualty and liability policies ... the insurance carrier ... shall pay ... up to a limit of not less than one million dollars ... in any one .. occurrence.
> (2) With respect to all other types of insurance for the state, the limits and amounts of insurance shall be determined and set by the department ... in accordance with the provisions of section 3 of this act (emphasis added).

Laws of Montana (1973), ch. 380, sec. 7 [codified at §82-4307, R.C.M. 1947 (Supp. 1973].

The act clearly contemplates more than liability insurance. The act provided for the establishment of a comprehensive insurance plan for the state including property, casualty, liability, crime, fidelity and other types of insurance deemed "reasonable and prudent." Section 82-4303. The legislature intended to permit political subdivisions to set up a similar plan and fund it with a tax levy. This was clarified by the 1977 amendments to the act.

Section 82-4306 originally stated in general terms that political subdivisions "shall have the authority to procure insurance under this act," and now specifically provides:

> All political subdivisions ... may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part (emphasis added).

Section 82-4306(1), R.C.M. 1947 (Supp. 1977).

Section 82-4309 provides for the tax levy and was similarly amended:

> Notwithstanding any provisions of law to the contrary, all political subdivisions may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve funds as herein authorized ....

Section 82-4309, R.C.M. 1947 (Supp. 1977).

Section 82-4306 now substantially conforms to the statutes authorizing the comprehensive state plan. See §82-4303(3), §82-4305(3), (4).

While the definitions upon which the previous opinion was based speak of tort liability, the act when viewed in its entirety is much broader. The act established not only a mechanism for dealing with claims previously barred by the defense of sovereign immunity, but also authorized a comprehensive plan to protect against a number of risks. Section 83-4303. The terms "personal injury," "property damage" and "claim" are used only in that part of the act relating to claims arising from the abolition of sovereign immunity, see §§82-4311 to 4335. They have no reference to the statutes authorizing a system of comprehensive protection. Therefore, it is my opinion the legislature intended to permit political subdivisions to establish insurance plans, and to give them the option of financing these plans with the annual property tax provided in §82-4309.

You also question whether voter approval is necessary to authorize the levy.

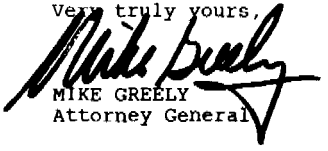
Neither Section 82-4309, which permits the levy, nor any statute or constitutional provision governing school finance requires school trustees to obtain voter approval prior to authorizing the levy. The revenue derived from the special levy comprises a fund separate and distinct from the general fund. 35 OP. ATT'Y GEN., No. 44 (1973). Section 75-6923 which requires an election prior to adopting a general fund budget in excess of the maximum-general-fund-without-a-vote, is not applicable. The school trustees are the public officers responsible for transacting all fiscal business of the district, Section 75-6806, and therefore may authorize the levy without seeking voter approval upon determining that such levy is "in the best interests of the district." Section 75-6806(8).

THEREFORE, IT IS MY OPINION:

1. The annual property tax provided by Section 82-4309 may be used to fund all policies of insurance required or permitted by law. This opinion reverses the contrary language in 35 OP. ATT'Y GEN. NO. 44 (1973).

2. The levy provided by Section 82-4309 does not require an election. The school trustees may authorize the levy upon determining that such levy is in the best interests of the school district.

Very truly yours,



MIKE GREELY
Attorney General

BG/so

VOLUME 37 OPINION NO. 110

CONFLICT OF INTEREST - Tenant in a housing authority is ineligible to serve as commissioner of the housing authority.
SECTION - 35-107, R.C.M. 1947.

HELD: A tenant in a housing authority is ineligible to serve as a commissioner of the housing authority.

27 January 1978

David V. Gliko, Esq.
City Attorney
City of Great Falls
Great Falls, Montana 59403

Dear Mr. Gliko:

You have requested my opinion concerning whether a tenant in a housing authority may serve as a commissioner of the housing authority. A housing authority is a public body consisting of five commissioners, created pursuant to the Housing Authorities Law, Section 35-101, et. seq., R.C.M. 1947, and delegated powers to build and maintain safe and sanitary dwelling accomodations for persons of low income. The commissioners are appointed by the mayor. Section 35-105, R.C.M. 1947.

Your request is governed by Section 35-107, R.C.M. 1947, which states:

> No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of any authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

The Montana Supreme Court has not construed this statute in the situation posed in your request. However, two states, Connecticut and Illinois, have interpreted similar statutory language as prohibiting tenants in a housing authority from serving as commissioners of the housing authority. Although decisions of sister states are not binding upon the Montana Supreme Court, the Court has stated that when a Montana statute is similar to one in a sister state, the Supreme Court will give consideration to construction placed on that statute by courts of the sister state. Dept. of Highways v. Hy-Grade Auto Court, 169 Mont. 340, 546 P.2d 1050 (1976).

In Housing Authority of City of New Haven v. Dorsey, 164 Conn. 247, 320 A.2d 820 (1973), cert. denied 414 U.S. 1043 (1973), the Connecticut Supreme Court interpreted a statute identical to Section 35-107, R.C.M. 1947. The problem presented by a tenant of a housing authority serving as a commissioner is best stated in Dorsey at 822:

> Within the context of this common-law standard the General Assembly has provided by statute that no commissioner of a housing authority shall acquire any interest, direct or indirect, in any housing project. General Statutes §8-42. An "interest" has been defined as having a share or concern in some project or affair, as being involved, as liable to be affected or prejudiced, as having self-interest, and as being the opposite of disinterest. (Citation omitted.)
>
> The interests of a housing authority commissioner would center on the points at which management policies and functions of the authority come into contact with individual tenants. These include the selection and retention of tenants, the determination of rents to be charged, the services and other benefits to be furnished, and the enforcement of the rules governing the conduct and rights of the tenants. In fixing rents the commissioners must consider the payments on the principal and interest on the bonded indebtedness, the cost of insurance and administrative expenses, the amounts to be set aside in reserve for repair, maintenance and replacements, and vacancy and collection losses. (Citation omitted.)
>
> The task of fixing rent charges is such that a tenant commissioner might be called on to vote to

> increase his own rent in order to amortize and service the housing authority's debt obligation. If he is reluctant to increase rents which include his own, the housing authority might fail to pay its bonded indebtedness and permit unchecked physical depreciation of the properties. Matters on which the housing authority votes include the setting and the enforcing of its policies as to delinquent rents and the eviction of tenants. As a housing authority commissioner, a tenant would also be required to participate in voting on decisions involving the hiring and firing of housing authority personnel who deal with him and his family from day to day.
>
> Thus, whether or not the tenant as a housing authority commissioner is in fact benefiting himself individually by his vote, his personal interests are always directly or indirectly involved in his vote on the commission. This is not to say that his personal interests are inevitably and on all occasions antagonistic to the interests of the housing authority. The fact, however, that he is a tenant makes it possible for his personal interests to become antagonistic to the faithful discharge of his public duty. (Citation omitted.)

Section 35-109, R.C.M. 1947, presents this same conflict of interests by granting housing authority commissioners the same powers discussed in Dorsey.

Support for this rationale is found in Brown v. Kirk, 64 Ill.2d 144, 355 N.E.2d 12 (1976), wherein the Illinois Supreme Court, citing Dorsey, held tenants of a housing authority ineligible to serve as commissioners.

In construing legislative intent, statutes must be read and considered in their entirety and legislative intent may not be gained from wording of any particular section or sentence, but only from consideration of the whole. Vita-Rich Dairy Inc. v. Dept. of Business Regulation, ___ Mont. ___, 553 P.2d 980 (1976). Reading Section 35-107, R.C.M. 1947, in its entirety, the disclosure requirements found in the second sentence only apply to pre-existing interests. Otherwise, the first sentence of Section 35-107, R.C.M. 1947, serves no useful purpose. There would be no bar to a commissioner or employee from acquiring an interest in a housing authority because he could simply disclose this

interest after acquisition. Section 35-107, R.C.M. 1947, prohibits any commissioner from acquiring an interest in property included or planned to be included in a housing authority after his appointment, but does not require a commissioner to divest himself of interests acquired prior to his appointment. A commissioner is only required to disclose the latter type of interest.

The argument could be made that a person who is already a tenant of the housing authority remains eligible for appointment as commissioner. This argument was rejected by Brown. The court stated at p. 14:

> However apt this distinction between a newly acquired and pre-existing interest may be in cases where the question is purchase of property to be included in a project, we think that it is not appropriate in the case of a tenant, who retains a continuing contractual relationship with his landlord subject to periodic renewal.

This continuing contractual relationship between landlord and tenant is also prohibited by Section 59-501, R.C.M. 1947, which states:

> Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof, must not be interested in any contract made by them in their official capacity, or by any body, agency, or board of which they are members or employees.

THEREFORE, IT IS MY OPINION:

> A tenant in a housing authority is ineligible to serve as a commissioner of the housing authority.

Sincerely,

MIKE GREELY
Attorney General

MG/RA/br

VOLUME 37 OPINION NO. 111

DISTRICT COURTS - filing fees;
INHERITANCE - filing fees;
INHERITANCE - domiciliary foreign personal representative.
SECTIONS - 91A-4-201; 25-232(n), R.C.M. 1947.

HELD: Section 25-232, R.C.M. 1947, does not authorize the Clerk of the District Court to charge a domiciliary foreign personal representative for filing authenticated copies of his appointment, any official bond and an inventory and appraisal of the property of the non-resident decedent located in the State under Section 94A-4-204, R.C.M. 1947.

2 February 1978

J. Fred Bourdeau
Cascade County Attorney
Cascade County Courthouse
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

> Is the domiciliary foreign personal representative of the estate of a non-resident decedent who files authenticated copies of appointment, any official bonds and an inventory and appraisal of the property located in this state, required to pay the thirty five dollar filing fee under Section 25-232(n)?

Section 25-232(1) states:

> The clerk shall collect the following fees:
>
> ...
>
> (n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for the filing of a will for probate.

Section 91A-4-201 states in subsection (1):

> The domiciliary foreign personal representative of the estate of a non-resident decedent who wishes to receive payment and delivery as described in section 91A-4-204 or to exercise the powers over assets described in section 91A-4-207 shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located authenticated copies of his appointment and any official bond he has given, an inventory and appraisal of the property of the non-resident decedent located in this state,...

The filing of copies of the appointment of the foreign personal representative under 91A-4-201 is not an application for a probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, under Section 25-232(n). 35 Opinions of the Attorney General 94, held that a Clerk of Court may not charge a fee for services rendered in the absence of specific statutory authority. State ex rel. Atlantic Peninsula Holding Company v. Butler, 121 Florida 117, 164 So. 128 (1935), State ex rel. Baker v. District Court, 24 Mont. 425, 62 Pac. 688 (1900).

There is no statutory authority allowing the Clerk of Court to charge a domiciliary foreign representative for filing authenticated copies of his appointment and documents incident thereto.

THEREFORE, IT IS MY OPINION:

> Section 25-232, R.C.M. 1947, does not authorize the Clerk of the District Court to charge a domiciliary foreign personal representative for filing authenticated copies of his appointment, any official bond and an inventory and appraisal of the property of the non-resident decedent located in the State under Section 91A-4-204, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General

MG/DM/ar

VOLUME 37 OPINION NO. 112

COUNTY ATTORNEYS - Disclosure of investigation reports;
CORONERS - Disclosure of investigation reports;
POLICE - Disclosure of investigation reports;
SHERIFF - Disclosure of investigation reports;
CONSTITUTION - Right to know;
CONSTITUTION - Right of privacy;
CONSTITUTION OF MONTANA - Article II, Section 9;
CONSTITUTION OF MONTANA - Article II, Section 10;
SECTIONS - 32-1213(6), 32-2142.1, 32-2142.3(c), 69-5104, 95-802.
37 OP. ATT'Y GEN. 107 (1978).

HELD: County Attorneys, law enforcement personnel, and coroners must release reports of accident investigations, autopsies and related tests to persons specifically listed in statutes. Public access to the results of investigations not covered by statute is left to the discretion of the public official following the guidelines set forth in this opinion and 37 OP. ATT'Y GEN. NO. 107 (1978).

3 February 1978

J. Fred Bourdeau
Cascade County Attorney
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

> To whom must county attorneys, law enforcement personnel and coroners release reports of investigations, autopsies, and related tests?

Section 32-1213(b), R.C.M. 1947, which is part of the uniform Accident Reporting Act, provides:

> All accident reports and supplemental information filed as required by this act, shall be confidential and not open to general public inspection...except however, that the report and supplemental information filed by law enforcement personnel, as required by this act, may be examined by any person named in such report or

> reports, or by any driver, passenger or pedestrian involved in the accident, or by his representative designated in writing, or if such person shall be deceased, by his executor or administrator, or by the attorney representing such executor or administrator.

Reports of automobile accidents are to be disclosed to anyone involved in the accident or their representatives, as long as the representative is properly designated. This would include attorneys and insurance company personnel.

Other reports covered by statutes elsewhere may be subject to disclosure under this section if they are prepared as part of the investigation itself and therefore are "supplemental information" within the statute. This would include tests to determine alcohol content in the blood under Section 32-2142.1, R.C.M. 1947, as well as autopsy reports.

Section 32-2142.1(a), R.C.M. 1947, states:

> Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have been given consent...to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor.

Paragraph Section 32-2142.3(c), R.C.M. 1947, states:

> Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

Under this statute, the results of blood-alcohol tests can be disclosed only to the person tested unless it falls within the disclosure of accident reports as discussed above.

As with accident reports and blood-alcohol tests, autopsy information is also controlled by statute. Section 69-5104, R.C.M. 1947, states that an autopsy report:

> upon completion...shall be sent to the physician attending the person at the time of death..., upon

> request to the hospital or skilled nursing facility where the person died..., to the next of kin of the decedent or the representative of the decedent's estate...., and to such other person lawfully requesting the report. (Emphasis supplied.)

Lawfully, as used in this context, means that which is specifically authorized by law. Dominick v. Christensen, 87 Wash.2d 25, 548 P.2d 541, 542 (1976). Those public officials having a right to such information pursuant to another statute or investigative power which covers the disclosure of autopsy reports would be "lawfully" requesting the report. For example, under Section 95-802, R.C.M 1947, the County Attorney is to receive a copy of the autopsy report. Those people enumerated in the Accident Reporting Act would also be "lawfully" requesting the report in those circumstances where the autopsy report formed part of the accident report.

These statutes clearly cover the disclosure of information by county law enforcement personnel and coroners. However, the 1972 Montana Constitution specifically included provisions which must be considered. Article II, Section 10, entitled "Right of Privacy" provides:

> The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Article II, Section 9, entitled "Right to Know" provides:

> No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies or state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

There are two fundamental rights necessarily in conflict. On the one hand, the right of privacy which can be infringed only upon a showing of a compelling state interest, and on the other a right of public disclosure which may be defeated only if the individual's right of privacy is paramount.

The United States Supreme Court has established the general rule that the individual's "fundamental rights" under the

United States Constitution may not be abridged by government except in circumstances where a governmental interest necessarily overcomes the right. Roe v. Wade, 410 U.S. 113, 155 (1973). The 1972 Montana Constitution has established the right of privacy as a "fundamental right" and followed the United States Supreme Court in requiring that such a right can be overcome only by a compelling state interest. Likewise, the Montana Constitution has given "fundamental right" status to the Right to Know.

Each of these conflicting provisions can be overcome in the proper circumstances. However, the courts have not devised a clear definition of a "compelling state interest." Because of the conflicting rights involved, it is apparent that each circumstance must be addressed individually. The statutes I have discussed above appear to have been an attempt by the legislature to strike a balance between public disclosure and privacy. Problems arise with regard to criminal investigations which may very well involve matters not covered by the statutes. The public officials involved have no guidance as to the circumstances under which the results of an information gathered in the course of such investigations is disclosable. Although 37 OP. ATT'Y GEN. NO. 107 is directed to the Board of Real Estate it sets forth general guidelines which are applicable to criminal investigation records. A copy of that opinion is enclosed for your reference.

The public official who is the custodian of those records must apply the balancing test set forth in that opinion. His decision could be reversable by declaratory judgment action or other appropriate remedy.

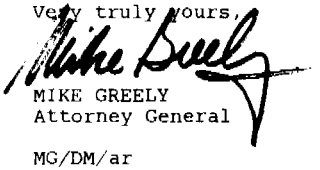
The reasons for disclosure of criminal investigation information are analagous to the disclosure of disciplinary action taken against licensees by the Board of Real Estate in OP. ATT'Y GEN. NO. 107.

In weighing the right to know and the right of privacy the balancing test in a criminal investigation will vary according to the stage of the investigation. Rights of privacy of witnesses, informants, or accused parties weigh heavily in the early and unsubstantiated stages. On the other hand the right to know becomes paramount when a criminal matter has culminated in the filing of an information or complaint as a matter of public record. The area in between must necessarily be left to the discretion of the custodian of the information.

THEREFORE, IT IS MY OPINION:

County Attorneys, law enforcement personnel, and coroners must release reports of accident investigations, autopsies and related tests to persons specifically listed in statutes. Public access to the results of investigations not covered by statute is left to the discretion of the public official following the guidelines set forth in this opinion and 37 OP. ATT'Y GEN. NO. 107 (1978).

Very truly yours,



MIKE GREELY
Attorney General

MG/DM/ar

VOLUME 37 OPINION NO.113

EMPLOYEES, PUBLIC - Severance Pay;
LABOR RELATIONS - Collective Bargaining Agreements between school districts and their employees; provision for severance pay;
SCHOOL DISTRICTS - Contracts with teachers and employees; provision for severance pay;
TEACHERS - Severance pay.
1889 MONTANA CONSTITUTION - Section 29, Article V;
SECTIONS 75-5933, 75-5934 and 75-6102, R.C.M. 1947;
34 OP. ATT'Y GEN. NO. 29.

HELD: 1. Provision for severance pay in a collective bargaining agreement between a local school district and its employees, based on the number of years of service of the individual employees, is deferred compensation and is considered wages earned throughout the period of employment.

2. Pursuant to a collective bargaining agreement, a local school district may enter into contracts with its employees for severance pay if the payment is based on the number of years of service of each terminating employee.

8 February 1978

Honorable John B. Driscoll
Speaker of the House
Montana House of Representatives
Helena, Montana 59601

Dear Speaker:

You have requested my opinion concerning the following questions:

1. Is a provision for severance pay in a collective bargaining agreement between a local school district and its employees, where such provision is based on the number of years of service of each individual employee, deferred compensation and to be considered as wages earned throughout the period of employment?

2. Pursuant to a collective bargaining agreement, may a local school district enter into contracts with its employees which provide for severance pay upon termination of employment where such payments are based upon the number of years of service of each terminating employee?

In connection with your request, you have provided me with related factual background. Many local school districts have included severance pay provisions in their contracts with teachers as the result of collective bargaining between the districts and local units of the Montana Education Association. The agreements provide for severance pay upon a teacher's termination of employment. The amount of pay is related to the teacher's number of years of service.

The legality of these severance pay provisions has been cast into doubt by an August 6, 1976 legal opinion of the Flathead County Attorney. That opinion was rendered to the superintendent of the Flathead Public Schools and held that school districts may not legally include severance pay provisions in negotiated agreements with their employees. The opinion has apparently caused state-wide confusion concerning the validity of existing severance pay provisions and the future of contract negotiations between local school districts and their employees.

The Flathead County Attorney's opinion was expressly based upon a prior Attorney General opinion found at 34 OP. ATT'Y GEN. NO. 29 (1971), which held that payment of severance pay by a state agency to its terminated employees violated Article V, Section 29 of the 1889 Montana Constitution. Opinion NO. 29 held, "Severance pay is nothing more than saying to employees, 'You have not been paid enough for your services, and we will now pay you what you deserve.'" (Emphasis in the original.) Severance pay was held violative of Article V, Section 29 of the 1889 Montana Constitution, which provided that "no bill shall be passed giving any extra compensation to any public officer, servant or employee ... after services shall have been rendered ...."

Opinion No. 29 is inapplicable to the present question. The constitutional prohibition contained in Article V, Section 29 of the 1889 Constitution was not carried forward into the 1972 Montana Constitution. More importantly, a contractual provision for severance pay is a form of deferred compensation for actual services rendered and is not a gift or gratuity.

While the facts addressed in Opinion No. 29 are not clear, in context I understand the opinion to concern payments which were the result of a unilateral act of benevolence by the state agency involved. The payments were in the nature of gifts or gratuities. Contractual provisions for severance pay are different. Where arrived at through collective bargaining and based upon the length of an employee's service at the time of his termination, severance pay is deferred compensation which is generally considered as wages earned throughout the period of employment. Owens v. Press Pub. Co., 120 A.2d 442, 446, 20 N.J. 537 (1956). Thus, not even Article V, Section 29 of the 1889 Montana Constitution would invalidate contractual severance pay provisions since that section condemned only increasing compensation after services had already been rendered. See Jones v. Burns, 138 Mont. 268, 293, 357 P.2d 22 (1960).

Local school districts are statutorily authorized to hire teachers and other employees. Sections 75-5933 and 75-5934, R.C.M. 1947. In the case of teachers, employment must be pursuant to contract. Section 75-6102, R.C.M. 1947. Although some provisions of employment agreements are regulated by statute, e.g., Section 75-6102, R.C.M. 1947 (payment for holidays), the amount and specific form of compensation which districts may pay teachers and other district employees are not mandated by statute. As a general rule where mode and manner of executing a duty or power given a political subdivision of the state is not expressly prescribed, any reasonable mode and manner of exercise is permitted. See Thompson v. Gallatin County, 120 Mont. 263, 184 P.2d 203 (1947). A collective bargaining agreement, which provides for payment of severance pay based upon number of years of service to teachers upon termination of employment, is a reasonable form and manner of compensation.

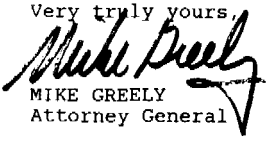
THEREFORE, IT IS MY OPINION:

1. Provision for severance pay in a collective bargaining agreement between a local school district and its employees, based on the number of years of service of the individual employees, is deferred compensation and is considered wages earned throughout the period of employment.

2. Pursuant to a collective bargaining agreement, a local school district may enter into contracts

with its employees for severance pay if the payment is based on the number of years of service of each terminating employee.

Very truly yours,



MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME NO. 37 OPINION NO. 114

ADMINISTRATIVE PROCEDURE - Board of Pardons and Department of Institutions - prisoner furlough program;
PRISONERS - Short term furloughs;
STATE AGENCIES:
BOARD OF PARDONS - Authority to approve short term prisoner furloughs;
DEPARTMENT OF INSTITUTIONS - Authority to use short term prisoner furloughs.
SECTIONS - 95-2219, et. seq., and 95-2226.1, R.C.M. 1947; 37 OP. ATT'Y GEN. NO. 82 (1977).

HELD: Under the prisoner furlough program, Sections 95-2219, et. seq., R.C.M. 1947, a furlough may be granted to a prisoner for a specific, limited period of time. The prisoner may be required under the terms of the furlough agreement to return to prison at the end of the furlough unless he applies for and is granted a new furlough. The Board of Pardons may review specific duration plans submitted to it and determine if the applicants are good candidates for furlough under the plans submitted.

14 February 1978

Mr. Henry E. Burgess, Chairman
Board of Pardons
1119 Main Street
Deer Lodge, Montana 59722

Dear Mr. Burgess:

You have requested my opinion concerning the following question:

> Under the prisoner furlough program, Sections 95-2219 et. seq., R.C.M. 1947, may a work or study furlough be granted a prisoner for a specific, limited period of time, at the end of which the prisoner would be required to return to the prison or obtain approval and execution of a new furlough plan?

A recent Attorney General opinion, 37 OP. ATT'Y GEN. NO. 82 (October 17, 1977), discussed the furlough program and the respective roles and powers of the Board of Pardons and Department of Institutions thereunder. Generally, the

Board's role is an adjudicatory one involving a determination of whether each furlough applicant "is a good candidate for furlough under the general plan or program he proposes."

The furlough statutes do not specify what terms and conditions must be made a part of the plan an applicant submits to the Board or what terms and conditions shall be incorporated in the final furlough agreement executed between the prisoner, the Department, and the supervising agency. There is neither a provision limiting the duration of furloughs to a specific period of time nor any provision requiring that a furlough be granted for the entire duration of time left to be served on the prisoner's sentence or until he is granted parole.

Opinion No. 82 holds that the Department of Institutions has broad authority in fixing the terms of furlough:

> 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 the agreement will contain. * * * [T]he Department may include conditions which further the purposes of the furlough program.

In some cases a furlough plan or agreement cannot cover the entire period of time remaining before the applicant prisoner becomes eligible for parole or entitled to mandatory release since the proposed training program, job, or schooling may have a specific, shorter duration. For example, educational and training programs are typically completed within specified times. Granting indefinite furloughs in cases where the program is for a limited duration would be incompatible with the Department's responsibilities for furloughees' activities and inconsistent with furlough program objectives which link furloughs to gainful employment, schooling or training. Similarly, rejection of a program because it does not plan for all the time remaining on a prisoner's sentence may eliminate many educational and vocational opportunities and frustrate or delay rehabilitation. Limited duration furloughs are a reasonable middle ground between the all or nothing approach. These may also serve to further the furlough program goals by permitting furloughs of prisoners who are good candidates for short term furloughs with intense supervision and training which may be unavailable on a long term basis. Furloughs for specific, limited periods of time are consistent with the goals of the prisoner furlough

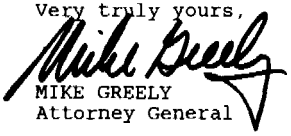
program. The Department of Institutions has the authority to limit a furlough to specific duration as a condition of furlough agreement. The Board of Pardons has corresponding authority to review all specific duration plans to determine if the applicant is a good candidate for furlough under the plan submitted.

In reaching this conclusion I am aware of the procedural requirements set forth in Section 95-2226.1 for returning furloughees to prison. These requirements concern the return of prisoners for alleged violations of furlough plans, and cases in which the furloughees are unable to benefit from further participation in their programs. The provisions do not preclude conditioning a furlough agreement upon the prisoner's return to prison at the end of a specific duration furlough.

THEREFORE, IT IS MY OPINION:

Under the prisoner furlough program, Sections 95-2219 et. seq., R.C.M. 1947, a furlough may be granted to a prisoner for a specific, limited period of time. The prisoner may be required under the terms of the furlough agreement to return to prison at the end of the furlough unless he applies for and is granted a new furlough. The Board of Pardons may review specific duration plans submitted to it and determine if the applicants are good candidates for furlough under the plans submitted.

Very truly yours,



MIKE GREELY
Attorney General

MG/MMcC/kf

VOLUME 37 OPINION NO. 115

CONSTITUTIONS - Appointment of judges;
CONSTITUTIONAL CONVENTION - Intent as to judicial appointments;
DISTRICT COURTS - Appointment of judge;
DISTRICT COURTS - Election of appointed judge;
GOVERNOR - Appointment of district judge;
LEGISLATURE - Senate confirmation of judicial appointment;
LAWS OF MONTANA (1977), ch. 517;
SECTIONS 93-705, et. seq.; 93-713; 93-714; 93-717, R.C.M. 1947;
1972 MONTANA CONSTITUTION - Article V, §7; Article VI, §6; Article VII, §8.

HELD: The Senate confirmation of an individual appointed by the Governor to the office of District Judge is required before that office may be placed on the ballot for election.

10 February 1978

The Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Mr. Murray:

You have requested my opinion on the following question:

> Is Senate confirmation of an individual appointed by the Governor to the office of District Judge required before that office may be placed on the ballot for election?

Laws of Montana (1977), ch. 517, created the 19th Judicial District, a new judicial district in the State of Montana. Portions of that chapter provided:

> The judge in the 19th Judicial District shall be appointed by the Governor under the provisions of 93-705 through 93-717.

On July 20, 1977 the Governor appointed the new judge for the 19th Judicial District, and the Letter of Appointment was recorded in the office of the Secretary of State in the Executive Record.

Section 93-713, R.C.M. 1947 provides that a judge appointed by the Governor to either the district court or the supreme court must be confirmed by the Senate. That section provides:

> Confirmation by the Senate - Interim Appointment
> Each nomination shall be confirmed by the Senate, but a nomination made while the Senate is not in session is effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

Section 93-714 provides that a nominee confirmed by the Senate serves until the next succeeding general election. The above statutory provisions are derivations of the provisions of Art. VII, §8, Montana Constitution, which provides:

> (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.
> (2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.
> (3) If an incumbent does not run, there shall be an election for the office.

The language of the Constitution and the statutes is clear. Each nomination must be confirmed by the Senate. The Senate will next convene in regular session on January 3, 1979. It is my opinion that the district judge appointed in the 19th Judicial District shall serve at least until the end of that legislative session. Candidates for that position would then be placed on the ballot at the first election after Senate confirmation. The next regular general election will be held in November, 1980.

The provisions of Art. VII, §8 of the Montana Constitution requiring Senate confirmation are clear and unambiguous. Constitutional as well as statutory provisions must be interpreted according to the usual and ordinary meaning of the language used. Matter of McCabe, 168 Mont. 334, 544 P.2d 825 (1975). The terms must be given the natural and popular meaning in which they are usually understood. State v. Moody, 71 Mont. 473, 230 P.375 (1924); Cashman v. Vickers, 69 Mont. 516, 223 P.897 (1924).

For the most part, the provisions of the Montana Constitution encourage officials appointed to vacant offices to submit to the electorate at the next regularly scheduled general election. See Art. VI, §6 Montana Constitution regarding the filling of vacancies in the office of Secretary of State, Attorney General, State Auditor or Superintendent of Public Instruction, or Art. V, §7 requiring a vacancy in the legislature to be filled by special election unless otherwise provided by law. Neither of those provisions, however, contain the special requirement of Senate confirmation that pertains to judicial vacancies. The rule that where there is no ambiguity in the language of a statute, the letter of the law will not be disregarded under the pretext of pursuing its spirit, applies to the interpretation of a provision of the Constitution. Cruse v. Fischl, 55 Mont. 258, 175 P.878 (1918).

The intention of the framers of the Constitution may be disclosed by the language employed in the particular provision, when considered within the context of the legislative history of the subject. Northern Pacific Railroad Co. v. Mjelde, 48 Mont. 287, 137, 386 (1913). And, it has been held that in construing a provision of the Constitution, recourse can be had to the proceedings of the Constitutional Convention. School District No. 12, Phillips County v. Hughes, 34 St. Rptr. _____, 552 P.2d 328 (1976).

In the course of the Convention's debate on the judicial article a motion was made to strike the provisions requiring Senate confirmation of judicial nominees (Tr. 3413). After limited debate that motion was defeated by a vote of sixty-nine to twenty-six (Tr. 3421). From a review of the transcript of the debate on the judicial article of the Constitutional Convention, it is evident that it was the intent of the Convention that judicial nominees appointed by the Governor would be subject to Senate confirmation.

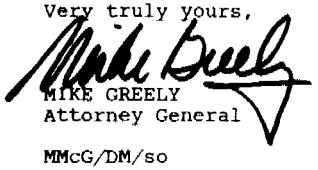
In 1972, when the Constitution was originally adopted, Art. V, §6 provided that the legislature would meet once a year in regular session of not more than sixty days. The provision requiring annual sessions was amended by an initiative petition adopted at the general election of November 5, 1974, effective December 31, 1974. The Constitution now requires the legislature to meet only in odd-numbered years in regular session of not more than ninety days.

While it may have been presumed by the delegates to the Constitutional Convention that the Senate confirmation process would take place on an annual basis, the effect of the elimination of annual sessions on the judicial nominating process is to allow Senate confirmation only every second year.

THEREFORE, IT IS MY OPINION:

> The Senate confirmation of an individual appointed by the Governor to the office of District Judge is required before that office may be placed on the ballot for election

Very truly yours,



MIKE GREELY
Attorney General

MMcG/DM/so