MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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INTERPRETATION SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the Matter of the Department of Agriculture Amending a Rule for the Plant Industry Division, Apiculture Rules.	NOTICE OF PUBLIC HEARING for Amending Rule 4.14.000 Plant Industry Division, Apiculture Rules.

TO: All Interested Persons

1. On July 10, 1978, at 10:00 a.m., in the Highway Auditorium, on Sixth and Roberts Streets, Helena, Montana, a Public Hearing will be held by the Montana Department of Agriculture to review the present rule 4.14.000, Registration of Apiaries and Limitations of Registration, for the purpose of amending the present language.

2. Said hearing is being held pursuant to a formal Petition filed with the department on May 5, 1978. Petitioners proposed language is as follows but it should be noted that this language may be changed after the hearing is held. This will be determined after all input has been received and considered.

ALL PRESENT LANGUAGE IS PROPOSED TO BE AMENDED AS FOLLOWS:

(1) All apiaries located in the state of Montana and all beens hives and beekeeping equipment located or brought into the state for location, operation or use within the state, shall be registered with the Montana Department of Agriculture. All apiaries and all beees, hives and beekeeping equipment located, kept, owned, operated or managed within the state of Montana or brought into the state shall be subject to inspection by the Department of Agriculture in the manner provided by law and rules and regulations of the department. As used in this rule and the following sections and subsections thereof, unless the context requires otherwise, the words 'apiary', 'hive', 'equipment', and 'person' shall have the same meaning and definitions as set forth in Section 3-3101, R.C.M. 1947, as amended, and the word 'department' shall mean and refer to the Department of Agriculture of the State of Montana.

(2) For the purpose of registering apiaries there shall be four classes of registration. An appropriate registration permit shall be issued by the Department of Agriculture for each class of registration after the department has accepted and approved an application for registration. The classes of registration and permits for the same are as follows:

(a) a landowner apiary registration and permit as defined in Section (4)(a) of this rule;

(b) a hobbyist apiary registration and permit as defined in Section (4)(b) of this rule;

(c) a pollination apiary registration and permit is defined in Section (4)(c) of this rule; and

(d) a commercial apiary registration and permit. A

commercial apiary and permit is any registration and permit other than those mentioned in subsections (a), (b), and (c) above this Section (2).

Each applicant for the registration of an apiary shall specify the type of registration and permit which he desires to receive.

(3) Except otherwise provided in Section (4) of this rule, no apiary shall be located, established or registered within three (3) miles of any other apiary.

(4) The limitation on locating, establishing and registering of apiaries set forth in Section (3) above of this rule shall not apply to the following:

(a) a landowner may locate an apiary anywhere upon his own land if he is also the owner and operator of the bees, hives and beekeeping equipment. All such apiaries shall be registered with the Department of Agriculture. The department may issue such landowner a landowner's permit for each such apiary. A landowner permit cannot be sold, transferred, rented or leased by the landowner to any other person, firm, association, partnership or corporation. This exception to the three (3) mile limitation set forth in section (3) above of this rule applies only to apiaries, bees, hives and beekeeping equipment which are located upon the landowner's own land and which are personally owned, operated and managed by the landowner. A landowner for the purpose of this subsection (a) shall mean the person who has the actual use and exclusive possession of the land.

(b) a hobbyist beekeeper is a person who owns and operates five (5) or less hives of bees. A person who desires to establish and operate an apiary consisting of five (5) or less hives of bees as a hobby shall not be subject to the three (3) mile limitation on the location of apiaries if such person personally owns, operates and manages the bees, hives and equuipment. A person so deisring to operate bees as a hobby shall apply to the Department of Agriculture for the registration of his apiary and if the department approves the same it may issue such person a hobbyist permit for one apiary location and not to exceed five (5) hives of bees. A hobbyist permit shall not be sold, transferred, leased or rented by the holder thereof to any other person, firm, association, partnership or corporation. The Department of Agriculture shall not register or issue a hobbyist permit for the location of a hobbyist apiary upon any quarter section of land or town or city block upon which there is located one or more existing hobbyinst or other apiaries if the department determines that the location of additional apiaries on said land or town or city block would result in apiaries being within such close proximity to one another that there would or may be danger of spread of disease or that the proximity would or may interfere with the proper feeding and honey flow of established apiaries. PROVIDED, however, the department shall not issue more than one hobbyist permit to any one person nor more than two hobbyist

permits to any family unit. For the purposes of this subsection (b) the term 'family units' shall mean two or more persons living together in the same dwelling house or other place of residence.

(c) if any commercial seed grower, commercial fruit grower, commercial alfalfa grower, or commercial produce grower requests the Department of Agriculture to allow apiaries to be located closer to one another than three (3) miles for purposes of pollinating his crop or orchard, the department may, if it is satisfied that such apiaries are needed in order to pollinate such person's crop or orchard, permit the location and registration of such number of apiaries as it (the department) determines is necessary to accomplish the requested pollination. All such requests shall bein writing and shall specify the location of the crop or orchard, the type or nature of the crop or orchards, the number of apiaries requested and the proposed location of each apiary. If the department is satisfied that such apiaries are needed in order to pollinate the applicant's crop or orchard, the department may issue a pollination permit for each apiary location that it determines is needed for purpose of pollinating said crop or orchard. Pollination permits shall not be transferred, sold, leased, or rented, and shall be valid for only such period of time as the deparmtnet determines is needed to accomplish and complete the requested pollination; provided, however, that in any event all such apiaries shall be removed within two weeks after the full bloom period of the crop or orchard to be pollinated has ended.

(d) any person who has one or more permits for registered commercial apiaries may locate, register and recieve commercial permits for additional commercial apiaries which are located less than three (3) miles from his own registered commercial apiary locations so long as such additional locations are three or more miles away from commercial apiary locations registered to other persons.

(e) landowner permit locations, hobbyist permit locations and pollination permit locations registered under the provisions of subsection (a), (b) and (c) of this Section (4) shall not prevent or prohibit the location and registration of commercial permit apiaries which are less than three (3) miles from such landowner, hobbyist and pollination apiaries.

3. The reasons for the proposed amendment are as follows: To re-write the existing rule so as to clearly spell out that all apiaries in Montana are to be registered with the Department of Agriculture, that all apiaries, bees, hives, and beekeeping equipment located or brought into the state are subject to inspection by the department, to classify the types of apiaries and the certificates (permits) of registration that the department will issue, to more clearly define the permitted proximity of apiaries, and the exceptions that will be allowed to the basic three (3) mile rule on the promity of

of apiaries.

4. Interested persons may present their data, views, or arguments, whether orally or in writing at the hearing set forth above.

5. Mr. Eldon R. Fastrup, Director of Programs & Operations, Montana Department of Agriculture, 1300 Cedar Street, Helena, Montana has been designated as hearing officer, to preside over and conduct the hearing.

6. The authority of the department to review and amend this proposed rule is based on Section 3-3102 (e), R.C.M. 1947.

W. Gordon McOmber

W. GORDON McOMBER, Director

Certified to the Secretary of State May 15, 1978.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
STATE OF MONTANA

In the matter of the amendment of Rule 8-2.6(10)-S690 defining limited income persons for the purposes of credit union membership	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 8-2.6(10)-S690, CREDIT UNION - LIMITED INCOME PERSONS, DEFINITION. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 25, 1978, the Montana Department of Business Regulation proposes to amend rule 8-2.6(10)-S690 which defines limited income persons for the purpose of credit union membership.

2. The rule as proposed to be amended provides in summary that the income guidelines for limited income persons, who may be eligible for membership in credit unions not withstanding other membership criteria, are amended to reflect changes periodically made by the Community Services Administration in its income poverty guidelines. The rule also provides for the manner in which limited income persons may be accepted for membership in a credit union. A copy of the entire rule as proposed to be amended may be obtained by contacting Kent Kleinkopf, Director, Department of Business Regulation, 805 North Main, Helena, Montana 59601.

3. The rule is proposed to be amended to render a definition of limited income persons for credit union membership which more clearly reflects changes in economic conditions and, thus, the needs of limited income people. The amendment also more clearly defines the manner in which a credit union may accept such limited income persons for membership. The amendment is intended to give the fullest meaning to the intent of the legislature in Section 14-618, Revised Codes of Montana 1947, which provides for membership of limited income persons in credit unions.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Department of Business Regulation, 805 North Main, Helena, Montana 59601 no later than June 23, 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 for a hearing and submit this request along with any written comments he has to Kent Kleinkopf, Director, Department of Business Regulation, 805 North Main, Helena, Montana 59601 no later than June 23, 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. Ten percent of those persons directly affected has been determinted to be three (3) credit unions based on the twenty-six (26) credit unions in the state of Montana.

7. The authority of the agency to make the proposed amendment is based on Section 14-609(2), Revised Codes of Montana 1947.

Kent Kleinkopf, Director
Department of Business Regulation

Certified to the Secretary of State May 15, 1978.

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

In the matter of the adoption of rules for bird stamp art work contest	))))	NOTICE OF PROPOSED ADOPTION OF RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On the 26th day of June, 1978, the Department of Fish and Game proposes to adopt rules for a bird stamp art work contest.

2. The proposed rule provides as follows:

Rule I. BIRD STAMP ART WORK CONTEST RULES (1) There will be an annual contest for selection of a design for the game bird licenses, Class A-1 and Class B-1, when issued by the department in the form of stamps.

Individuals who desire to submit art work for consideration as the design selected for a license year may do so under the provisions of this rule.

(2) Before art work may be considered by the judges, it must meet the following criteria:

(a) The design must be horizontal, 5 inches in height by 7 inches in width.

(b) Mat may be used, and when used, mat may be no larger than 8 inches in height by 10 inches in width.

(c) Frames may not be used, nor may the art work be under glass. Acetate or similar clear plastic coverings, if readily detachable, are acceptable.

(d) Name and address of the artist should be lettered on the back of the art work. No scroll work or lettering may be included on the art work itself.

(e) Art work designs may feature any Montana upland game bird, or any migratory waterfowl of the Family Anatidae. Hunting scenes or other features may be part of the art work; however, the bird species depicted must be the dominant feature.

(f) The design must be of the individual's own creation, neither copied nor duplicated from previously published art, including paintings, drawings in any medium, or published photographs.

(g) Art work may be composed in black and white or multicolor, and in the mediums of acrylic oil, watercolor, scratch board, pen and ink, or similar medium; however, photographs may not be submitted for consideration.

(h) Art work must not have been a winning design in a federal duck stamp competition.

(i) Art work may not be of a species depicted in a winning entry during the three preceding years in the contest.

(3) Individuals who desire to submit art work must meet the following qualifications:

(a) Be a resident of the state of Montana; and
(b) submit only one entry per year.
(4) Judging of the art work will be as follows:
(a) A panel of three/five individuals, selected by the director/commissioners, with expertise in art, ornithology, bird hunting, conservation, or painting shall make the selection of the winning entry.
(b) The selection will occur at a time and place to be set and published by the judges. At that time the judges will meet and select one of their number to act as head judge for all official purposes. During the selection, the names of the artists shall remain unknown to the judges.
(c) After selection of a winning entry, the judges shall notify the director/commission of the selection in writing signed by all judges.
(5) Deadlines for this contest are as follows:
(a) Entries will be accepted between October 1 and November 30, inclusive, each year. These entries shall be submitted to the Helena office of the department. Untimely entries may not be considered by the judges.
(b) Judges must meet and select the winning entry by January 15th following closure of acceptance period.
(c) Art work shall be returned to the participating artists by February 15th following the selection.
(6) Individuals submitting entries do so with the following understandings:
(a) The artist retains reproduction rights.
(b) Neither the department or the commission will provide any financial remuneration; however, the winning artist will receive ten (10) bird stamps depicting that artist's winning entry.
(c) While the department will take reasonable precaution to protect all entries from damage, it does not take responsibility for loss of an entry by fire or theft.

3. The rules are proposed to carry out the policy of the Fish and Game Commission relating to art work for bird stamp licenses.
4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601, no later than June 23, 1978.
5. The authority of the department to make the proposed rules is based on Section 26-202.4 , R.C.M. 1947; IMP, Sec. 26-212, R.C.M. 1947.

Robert F. Wambach, Director
Department of Fish and Game

Certified to the Secretary of State May 1, 1978
(date)

MAR Notice No. 12-2-55

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule relating to the sale or dissemination of license lists	))))	NOTICE OF PROPOSED ADOPTION OF RULE PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On the 19th day of June, 1978, at 8:30 a.m., a public hearing will be held in the commission room of the Fish & Game Building, 1420 E. 6th Avenue, Helena, Montana, to consider the adoption of a rule which sets department policy for the sale or dissemination of license lists.

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

3. The proposed rule provides as follows:

Rule I. POLICY OF THE DEPARTMENT FOR SALE OR DISSEMINATION OF HUNTING, FISHING, AND TRAPPING LICENSE AND OTHER DEPARTMENT LISTS

(1) The Fish and Game Commission sets forth for the Department of Fish and Game as part of the department's fulfillment of its responsibility for provision of hunting, fishing, and trapping licenses, the following policy regarding access to, the sale of, and dissemination of those license lists:

(a) Examination of lists of hunting, fishing, and trapping license holders. Upon request, the department should make available for examination the lists of license holders of hunting, fishing, and trapping licenses held by the department. This availability should be during ordinary working hours of the department, and should not require extra expense or time by department employees beyond that expense and time ordinarily required in the preparation of the lists for the regular purposes of the department. Where extra time and expense are required of the department for the examination of those lists, beyond that expense and time ordinarily required in the preparation of the lists for the regular purposes of the department, the requesting person should be required to pay a reasonable fee for that time and expense. Authorization to examine department lists does not include, and should not be construed to include, reproduction of these lists for utilization other than as set forth in this policy.

(b) Sale or dissemination of lists of hunting, fishing, and trapping license holders. The department

should not sell or otherwise disseminate lists of hunting, fishing, and trapping license holders. The lists should be utilized as necessary to fulfill the responsibilities of the department under state law and to carry out federal projects or federal requirements administered or participated in by the department.

(c) Unless specifically requested as set forth in subsection (1)(e) of this rule, subscription lists controlled by the department should be treated in the same manner as lists of license holders.

(d) Other lists of individuals. The department should treat lists of holders of other licenses or permits, and all other lists of individuals maintained by it, in the same manner as lists of holders of hunting, fishing, and trapping licenses except as otherwise provided by law or applicable rule.

(e) Upon written request of any individual, the provisions of this rule should be waived for that individual's name and address.

4. The department is proposing this rule because it is a public agency with specific purposes as set forth in law. These purposes derive from the wildlife of the State of Montana and the users of that wildlife. As a public agency its actions are open to public review, comment, and participation; yet concurrently the department may not infringe, nor should it be used to infringe, upon the private lives of citizens of this state without a compelling state interest. The policy heretofore set forth is to provide a balance between a person's right to know what occurs in state government and an individual's right to have a private life free from unwanted infringement.

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

6. A hearing officer will be designated at a later date to preside over and conduct the hearing.

7. The authority of the Fish and Game Commission to make the proposed rule is based on Section 26-103.1, R.C.M. 1947.

Chairman

Certified to the Secretary of State May 1, 1978
(date)

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the Matter of the Repeal of Rule 12-2.10(2)-S1070 Relating to Special Season Policy	)	NOTICE OF PROPOSED REPEAL OF A RULE SPECIAL SEASON POLICY NO PUBLIC HEARING CONTEMPLATED

To All Interested Persons:

1. At its first meeting after June 29, 1978, the State Fish and Game Commission proposes to repeal Rule 12-2.10(2)-S1070 relating to special season policy.

2. The rule proposed to be repealed is on page 12-30 of the Administrative Rules of Montana.

3. The commission proposes to repeal this rule because this policy is of a seasonal nature and procedures vary from time to time. Further, the annual rules of the commission include and provide for the subject matter of this rule.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 E. 6th Avenue, Helena, Montana 59601 no later than June 26, 1978.

5. The authority of the commission to make the proposed rule is based on sections 26-103.1 and 26-104.3, R.C.M. 1947.

Chairman

Certified to Secretary of State May 1, 1978
(date)

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule relating to regulations on Castle Rock Reservoir	)))	NOTICE OF PROPOSED ADOPTION OF RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after June 29, 1978, the State Fish and Game Commission proposes to adopt the following rule:

Rule I. CASTLE ROCK RESERVOIR REGULATIONS

(1) This rule is made in the interest of public health, public safety, and protection of property, and as a measure to achieve the fullest recreational use of the Castle Rock Reservoir. These regulations apply to the waters of the reservoir and to those portions of the surrounding lands which have been specifically reserved for recreational use.

(a) The use of motorboats of any type is prohibited on the reservoir except in case of use for official patrol, maintenance, search and rescue, or scientific purposes.

(b) No vehicles, including motorcycles, all-terrain vehicles, or snowmobiles are permitted in or on the waters of the reservoir or on the beaches.

(c) No vessels of any type nor swimming are permitted within 100 yards of the intake structure.

(d) The owner or handler of any animal, including but not limited to saddle horses and dogs, shall keep such animal under control at all times while in the area. No animal shall be allowed in the waters of the reservoir under any circumstances.

(e) Refuse, garbage, rubbish, or waste of any kind may not be thrown into the reservoir or on any portion of the lands within the recreational area, but shall be placed in refuse cans provided for that purpose.

(f) The destruction,injury, defacement, removal, or disturbance of any building, sign, equipment marker, or other structure authorized for public use, or of any tree, flower, vegetation, rock, mineral formation, or any other property of any kind installed for public use, is prohibited.

(2) It is understood that the main purpose of the Castle Rock Reservoir is to provide the primary

water supply for the Colstrip generating station and supplement drinking water for the town of Colstrip. Accordingly, any person at any time going in or upon the lands or waters thereof, whether as a visitor, fisherman, or other recreationist, shall assume all risks arising or resulting in injury or death to that person or damage to or destruction of property resulting directly or indirectly, wholly or in part, and from use of said reservoir, lands, or appurtenant structures, or their construction, operation and control by the Montana Power Company or by the Montana Department of Fish and Game and Fish and Game Commission.

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

3. The commission is proposing this rule in order to provide for orderly management of the public's activities on a reservoir owned and operated by a nonpublic agency.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 26th day of June, 1978.

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

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

8. The authority of the State Fish and Game Commission to make the proposed rule is based upon Section 26-104.9, R.C.M. 1947; IMP, Sec. 62-304, 26-104.6, R.C.M. 1947.

Joseph J. Mahoney
Chairman

Certified to Secretary of State May 1, 1978
(date)

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule relating to commercial fishing	NOTICE OF PROPOSED ADOPTION OF RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after June 29, 1978, the State Fish and Game Commission proposes to adopt the following rule:

Rule I. COMMERCIAL FISHING PERMIT

(1) Any person desiring to harvest nongame fish from any body of water in the state for sale or commercial distribution, must make written application to the director for a Commercial Fishing Permit upon a form furnished by the department.

(2) The form must be signed by the applicant including mailing address and residence of applicant and stating specifically the waters and species of nongame fish desired for harvest and equipment owned or controlled by applicant.

(3) If an application is approved, applicant must then give a bond to the department in favor of the State of Montana in the sum of one thousand dollars ($1,000) with corporate surety, conditioned on the faithful carrying out of the provisions of the application and permit. The department will then issue a license describing approved waters, species, seasons, and fishing methods.

(4) Commercial fishing, on any water of the state, except Fort Peck Reservoir, will be limited to one operator unless the department determines that additional harvest would be beneficial. Also special regulations regarding gear, limits, seasons, closures, etc., may be imposed on any water. Existing fishermen will receive first priority for retaining present permits. If additional waters are approved for commercial fishing or existing fishermen terminate their operation, the following criteria will be used to select permits for each water.

(a) Ability of applicant to provide desired level of harvest;

(b) Number of years of commercial fishing under Montana contract or permit;

(c) Adequacy of equipment and facilities and investment in land and facilities in Montana for commercial fishing;

(d) Previous fishing experience;

(e) State of residence.

(5) Permit fees for a Commercial Fishing Permit and species that may be taken are as follows: Class A -- $500 per year which authorizes the taking of smallmouth buffalo, bigmouth buffalo, goldeye, river carpsucker, freshwater drum, white sucker, shorthead redhorse sucker, longnose sucker, carp, and black bullhead for commercial purposes; Class B -- $200 per year which authorizes the taking of goldeye, river carpsucker, freshwater drum, white sucker, shorthead redhorse sucker, longnose sucker, carp, and black bullhead for commercial purposes.

(6) The permittee shall keep written records of all his operations and transactions relating to the taking, sale of, or other disposal of fish. The permittee shall make reports on commercial fishing activities to the director on forms provided by the department. These reports shall be submitted within 30 days following the end of each month.

(7) All species of fish except those taken as provided in Paragraph 5 of this agreement shall be returned alive and unharmed to the waters from which they came. All dead game fish shall be cut and sunk.

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

3. This Rule is to set forth in the Administrative Rules of Montana the longstanding practice and procedure of the Department of Fish and Game in the administration and grant of commercial fishing permits.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 26th day of June, 1978.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Dr. Wambach at the above stated address prior to the 26th day of June, 1978.

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

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

8. The authority of the State Fish and Game Commission

to make the proposed rule is based upon Section 26-332, 26-103.1, and 26-104, R.C.M. 1947; IMP, Sec. 26-332 and 26-333, R.C.M. 1947.

Chairman

Certified to Secretary of State May 1, 1978
(date)

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule relating to oil and gas leasing policy for department-controlled lands	)))	NOTICE OF PROPOSED ADOPTION OF RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after June 29, 1978, the commission proposes to adopt the following rule:

Rule I. OIL AND GAS LEASING POLICY FOR DEPARTMENT-CONTROLLED LANDS (1) The primary responsibility of the Fish and Game Commission is the protection and preservation of fish and wildlife habitat along with providing both recreational lands and recreational opportunities.

(2) Applications for seismic permits or for oil and gas leasing on lands controlled by the department will be considered on an individual basis according to the following procedures:

(a) Applications for seismic exploration permit for activities that cause no surface disturbance other than that necessary for seismic tests must be accompanied by a preliminary environmental review prepared by the Department of Fish and Game in accordance with the rules and regulations promulgated under the Montana Environmental Policy Act and adopted by the department. A permit, if granted by the department and approved by the commission, will be only for the purpose described in the preliminary environmental review and shall imply no right to engage in any activity not described in that review and will be for a specified period of time. Upon expiration of such a permit, results of any tests conducted will be provided to the department and shall become public record.

(b) Applications for leases for the purposes of exploratory well-drilling or development shall be accompanied by a complete environmental impact statement prepared by the Department of Fish and Game, consistent with the rules and regulations promulgated under the Montana Environmental Policy Act.

The impact statement shall include all necessary stipulations to ensure that oil and gas drilling and extraction shall not adversely affect the purposes for which the Fish and Game properties were acquired, and shall be agreed to by the applicant.

Cost of preparation of this environmental impact statement shall be borne by the applicant.

Upon review of the application, environmental impact statement, and special stipulations, the department may or may not grant the lease, subject to commission approval.

(c) In the event that a lease application for drilling an exploratory well or conducting oil and gas development activities is filed with the commission or department, the holder of an unexpired seismic exploration permit shall have the first right to apply for such a lease - provided he meets all the special conditions and stipulations specified by the department or commission.

(d) On matters relating to oil and gas leasing other than those affecting the fish, wildlife, and recreational resources, the commission adopts the rules and regulations promulgated by the Montana Department of State Lands as found in ARM, Title 20, Chapter 6, Subchapter 1.

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

3. The rationale for this rule is as follows: in order to provide for necessary wildlife habitat and wildlife consideration and protection in the management of lands under the control of the Department of Fish and Game while permitting the use of those lands for oil and gas leasing and seismic exploration purposes.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 E. 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 26th day of June, 1978.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public

hearing and submit this request, along with any written comments, to Dr. Wambach at the above-stated address prior to the 26th day of June, 1978.

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

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

8. The authority of the State Fish and Game Commission to make the proposed rule is based upon Section 26-103.1, R.C.M. 1947; IMP, Sec. 26-104.6 and 62-304, R.C.M. 1947.

Chairman

Certified to Secretary of State May 1, 1978
(date)

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the Amendment of Rules 20-2.4(1)-S400 through 20-2.4(1)-S470 and the establishment of new proposed Rule	)	NOTICE OF PROPOSED AMENDMENTS OF RULES FOR WORK EDUCATIONAL FURLOUGH AND NOTICE OF NEW PROPOSED RULE (Duties of Furlough Coordinator)
	)	NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On June 30, 1978, the Department of Institutions proposes to amend and renumber rules "Furlough Coordinator Duties". These proposed amendments and new rule will be in the administrative rules of Montana and the portions to be amended are underlined, those portions to be stricken are interlined.

Sub-Chapter 1
Work-Educational Furlough Program

20-2.4(1)-S400 WORK-EDUCATIONAL FURLOUGH PROGRAM (1) Purpose. The purpose of the furlough program is to allow ~~inmates, while serving their sentences to procure treatment~~, selected prisoners to increase their responsiblity to society, while serving their sentences and to procure treatment, education and/or employment. Furlough release is a privilege and should be considered a continuation of incarceration, not an early release from supervision. The program requires a supervising agency that is responsible for the constant supervision of the inmate. A contract signed by the ~~inmate~~ prisoner and supervising agency specifying the general provisions and requirements for each party involved in the furlough is required before the application is complete. Final releasing authority for the program lies with the Board of Pardons. Final authority in all other matters relating to the program rests with the Corrections Divitions within the Department of Institutions.

(2) Definitions.

(a) "Agent" is an ~~agent~~ officer of the probation and parole bureau of the Corrections Division.

(b) "Application" is the formal execution of the forms (No. 1-furlough program application) accompanied with necessary supporting documents.

(c) "Board" is the Board of Pardons.

(d) "Department" is the Department of Institutions, ~~school, or treatment program in a community setting prior to an inmate's release on parole.~~

(e) "Furlough" is the participation in either a work, school, or treatment program in a community setting prior to a prisoner's release on parole.

~~(f) "Inmate" is any adult person committed to the Montana State Prison. This includes women, felons transferred to Swan River Youth Forest Camp and inmates residng in the prison.~~

(f) "Prisoner" is any adult person connected to a Montana State correctional facility. This includes women, felons transferred to Swan River Youth Forest Camp and inmates residing in the prison.

~~(g) "Plan" is the proposal of work education, or treatment that the inmate intends to engage in the community upon release.~~

(g) "Plan" is the proposed total program that the prisoner intends to engage in the community upon release.

~~(h) "Supervising Ageney" is any officially constituted ageney or any appropriate person or group approved by the Corrections Division within the Department of Institutions. The supervising ageney shall be responsible for the direct supervision of the inmate while on furlough.~~

(h) "Supervising agency" is any appropriate person, group or agency approved by the Department of Institutions. The supervising agency shall be responsible for the direct supervision of the prisoner while on furlough.

20-2.4(1)-S410 INMATE APPLICATION PROCEDURE, GENERAL REQUIREMENTS. ~~(1) Inmate must establish by correspondence that~~

(1) Inmate Eligibility - prisoner will be rated by a Grid - Matrix chart as to suitability for the Furlough Programs. Criteria are:

(a) Type of crime.
(b) Prior felony sentences.
(c) Number of revocations.
(d) Number of escapes
(e) Composite time factor.
(f) Employment; skills/education.
(g) Programs attended at M.S.P.
(h) Good time per month.
(i) Institutional Adjustment.
(j) Security Status.
(k) Length of sentence.
(l) Time to parole.

(2) The prisoner must have written documentation that:

(2) Inmate must establish by correspondence that:

(a) He has employment with a reputable employer, for which he will be paid at a rate of pay not less than the minimum hourly wage or the prevailing rate of pay for persons employed in similar occupations by the same employer; or

(b) He has been accepted at a private or state college or university within the State of Montana, or any other institutions or program approved by the ~~corrections division~~ department; or

(c) He has arranged for a treatment plan with an established program.

(d) He has located a supervising agency acceptable to the ~~corrections division~~ department.

~~(e) He has accommodations with the supervising agency. Other arrangements may be considered by the corrections division.~~

(e) He has residence with the supervising agency. Other arrangements may be considered by the Department.

20-2.4(1) - S420 FURLOUGH CONTRACT. The ~~inmate~~ prisoner shall jointly sign a contract with his supervising agency stating the terms of his furlough. The contract shall specifically state:

~~(1) Inmate's place of employment;~~

(1) Location of residence;

~~(2) Place of education;~~

(2) Prisoner's place of employment;

~~(3) Place of treatment;~~

(3) Place of education;

~~(4) Name of individual(s) within agency assigned specifically to be responsible for inmate;~~

(4) Place of treatment;

~~(5) The inmate on furlough will report to work, school or treatment as scheduled, and if, for any reason, is unable to attend as such will immediately advise his supervising agent.~~

(5) Name and address of individual(s) within agency specifically assigned to be responsible for furloughee;

~~(6) A written statement specifying disbursement of furloughee's income while on furlough. Any balance over necessary expenses and allowance shall be deposited to an interest bearing account held in trust by the Department of Institutions for the furloughee and shall be paid in full to him upon his release.~~

(6) That prisoner on furlough will report to work, school or treatment as scheduled, and if, for any reason is unable to attend as such will immediately advise his supervising agent.

~~(7)--If-on-educational-furlough,-the-furloughee-will be-in-good-standing-with-the-school.~~

(7) A written statement specifying disbursement of the prisoner's income, while on furlough, including any court ordered restitution or any incurred debts. Any balance over necessary expenses and allowances shall be deposited to an interest bearing account held jointly by the sponsor and furloughee, and shall be paid in full to furloughee upon release.

~~(8)--Furloughee-shall-under-no-circumstances,-carry-or-have-in-his-possession-weapons,-burglary-tools-or-other inappropriate-items.~~

(8) If on educational furlough, the furloughee must be in good standing with the school.

~~(9)--Any-major-change-to-the-furlough-agreement-will be-submitted-to-the-corrections-division-with-prior-written approval-from-the-parole-officer-before-the-change-is instituted.~~

(9) Furloughee, shall under no circumstances, carry or have in possession any weapons, burglary tools or other inappropriate items; not possess narcotic or dangerous drugs except as prescribed by a physician. Furloughee shall submit to narcotic or drug testing as required by Probation/Parole Officer.

~~(10)-Educational-furloughees-shall-agree-to-allow-the corrections-division,-parole-office-and-supervising-agency to-have-access-to-grades-and-consultation-with-teachers.~~

(10) Any change to the furlough agreement will be submitted, in writing, to the Parole Officer for approval by the Department.

~~(11)-Specific-arrangements-will-be-made-for furloughee's-free-time.--The-supervisor-should-encourage-and-assist-the-furloughee-in-participating-in-personal social-development-activities.--All-of-furloughee's time-must-be-accounted-for-by-the-supervisor.--Supervisor and-Furloughee-will-meet-daily-at-least-for-first-30-days to-work-out-furloughee's-schedule-of-activities-and-discuss progress-of-furlough.~~

(11) Educational furloughees shall agree to allow the Department, parole office and supervising agency to have access to grades and consultation with instructors.

~~(12)-Specific-arrangements-shall-be-made-for-the furloughee's-transportation.~~

(12) Specific arrangements will be made for furloughee's free time. The supervisor should encourage and assist the furloughee in participating in social development activities. All of furloughee's time must be accounted for by the supervisor. Supervisor and furloughee will meet daily at least for first thirty (30)

days to work out furloughee's schedule of activities and discuss progress of furlough.

~~(13) The furloughee will not attend establishments whose primary function is to serve alcoholic beverages.~~

(13) Specific arrangements shall be made for the furloughee's transportation.

~~(14) A reasonable curfew will be set and the furloughee will agree to abide by this curfew.~~

(14) The furloughee will not attend establishments whose primary function is to serve alcoholic beverages; nor attend places involved in illegal activity nor associate with convicted felons, except in approved activities.

~~(15) Any violation of any terms of the furlough contract will be reported to the Corrections Division by the supervising agency and may be grounds for the revocation of the furlough.~~

(15) A curfew will be set and the furloughee will agree to abide by the curfew.

(16) Any violation of any terms of the furlough contract will be immediately reported to the Parole Officer and Department by the supervising agency and may be grounds for the revocation of the furlough.

(17) Furloughee shall obtain written permission before going into debt, purchasing property or engaging in business enterprise.

(18) Furloughee shall not change marital status without written permission from both the Warden, M.S.P. and the Department.

(19) Furloughee shall be subject to search of person and/or premises by Parole Officer at any time, with or without warrant, upon reasonable cause.

(20) Furloughee shall be responsible for medical and dental care except where authorization has been received through Business Manager, M.S.P.

(21) Furloughee shall not travel out of state. Travel in state will require written permission from Parole Officer.

20-2.4(1)-S430 REVOCATION OR CHANGE OF FURLOUGH Should the supervising agency, Parole Officer, or the Department have any doubt as to the success of the furlough plan or to the ~~participant's~~ furloughee's ability to conform to the ~~furlough~~ contractual agreement, ~~either~~ each may request that the ~~participant~~ furloughee meet with the agency. Parole Officer, or Department or all. At such conference ~~the participant~~ furloughee shall be informed of the nature of his violation or nonconformance. If that conference is not sufficient to resolve the problem, an on-site hearing by the hearing officer of the Probation & Parole Bureau shall be requested. If the hearing officer finds there

is probable cause to believe that the conditions, limitations and restrictions of the furlough agreement has been violated, the ~~participant~~ furloughee shall be returned to prison. At the next ~~regularly-scheduled~~ meeting of the Board of Pardons, the inmate shall be given ~~a-due-process-hearing-and-either-retained-at-the-prison-or-assigned-to-a-social-worker-at-the-correctional-facility to-formulate-new-furlough-plans.~~ a revocation hearing.

If it is called to the Department's attention by the probation and parole bureau or the supervising agency, that the ~~participant~~ furloughee is presenting a grave threat to the community, the parole officer shall have him apprehended and incarcerated pending return to the prison. ~~(Warrants-shall-be-furnished-for-this-procedure-by-the department.)~~ ~~A-due-process~~ A revocation hearing shall be held by the Board of Pardons no later than 30 days after the ~~participant's~~ inmate's return to prison.

If after 30 days on furlough, the participant feels his furlough plans must be changed, he and the supervising agency, with the advice and consent of the parole office may later the plans. Any changes shall be approved by the department before they are instituted. If the participant wishes to have a new supervising agency, he may request a hearing from the department, provided he has reasonable and well-documented grounds for such a request.

If after the furlough is completed, the prisoner has time remaining on his sentence to parole eligibility, he shall with the help of the ~~corrections-division~~ Department ~~make-new-plans~~ apply for an extension of his current furlough or shall design a new furlough plan, or return to M.S.P.

20-2.4(1)-S440 SUPERVISING AGENCY - REQUIREMENTS

The supervising agency can be any ~~officially-constituted,~~ agency ~~or-any-appropriate~~ persons, or group approved by the department. ~~of-institutions'-director~~. This includes but is not limited to, any federal, state, local or private agency, Indian tribe or reservation, church group or minister. The supervising agency shall be responsible for the direct supervision of the furloughee. ~~participant~~. If the supervising agency is a group, one person within the group must be designated to act as the furloughee's direct supervisor. ~~That-person-~~ The furloughee in conjunction with the sponsoring agent, shall be responsible for making a brief monthly report on the approved form.

To apply to be a supervising agency, the agency, individual, or group shall make a written statement indicating its motiviation for wanting to supervise a

prisoner and its plan for his supervision including his use of free time. This letter shall be part of the packet containing the application and the contract. This packet shall be sent to the social services department at the prison. In its application, the agency shall provide ~~information to~~ the following information:

(1) Agency's name and functions.

(2) Relationship to the furlough participant, if any.

(3) Prior experience in the corrections field.

(4) Amount of time and manpower available to supervise participant. It shall be a condition of the contract that the furlough participant have daily contact with the supervising agency for at least the first month of his release. Special circumstances will be handled on an individual basis. If, during the furlough the participant demonstrates increasing responsibility and stability contact may be decreased to a more appropriate interval. Any changes to the frequency of contact must be approved first by the parole officer. Under no circumstances are changes to be made to the contract without prior written consent of the parole officer. A copy of the change and the parole officer's written consent should be sent to the ~~corrections division~~ department for approval.

(5) Provision for the ~~participant's~~ furloughee's free time.

(6) Willingness to cooperate with the parole ~~agent~~, officer, board of pardons and ~~participant's social worker~~ the department.

(7) Type of facility in which the inmate shall reside.

20-2.4(1)-S450 PAROLE AND PROBATION BUREAU - DUTIES After all of the appropriate documents have been collected and received by the corrections division a packet containing the application, contract, letter of intent, social history and current psychological summary will be prepared by the furlough coordinator and mailed to the field agent through the probation and parole bureau. The parole officer ~~should~~ shall ~~visit~~ conduct an investigation of the proposed supervising agency and ~~review the contract with that agency. The parole officer shall then fill out the approved form and return it to the corrections division furlough coordinator.~~ Report findings to the Furlough Coordinator via the Probation/Parole Bureau. This report should be ~~made~~ completed within two weeks after receipt of the ~~packet~~ request. At the time of investigation the parole officer shall inform the local law enforcement and criminal justice personnel of the proposed furlough plan.

The parole officer shall maintain at least monthly contact with the furloughee, and shall provide conseling to the supervising agency and furloughee if necessary. Although the supervising agency has primary responsibility for the furloughee, the parole officer is an important element to the success of the plan. The corrections staff is free to consult with the furloughee, supervising agency or work furlough coordinator at any time.

In the event that the furloughee, after placement on furlough, should be detained, the parole officer shall follow the procedures used for detention of parolees.

20-2.4(1)-S460 PRISON FURLOUGH COMMITTEE - DUTIES - MEMBERS ~~Warden or deputy Warden, staff social worker representative from probation and parole bureau. The committee shall meet the first week of each month.~~ Community Services Bureau Chief, Director Social Services Department, M.S.P., and Probation/Parole Bureau Chief or designated representatives.

~~The committee shall vote to recommend approval or disapproval of proposed plan.~~ The committee shall meet the second Tuesday of each month and shall vote, by simple majority to recommend approval or disapproval of the proposed plan. ~~The vote shall be by simple majority.~~ The furlough committee may meet in executive session to arrive at its recommendation. The committee shall, if it recommends disapproval of the plan, make a written explanation of its decision. If so state in writing. The ~~applicant~~ prisoner shall be notified of the recommendation.

The ~~inmate~~ prisoner shall be granted an interview with the furlough committee and the inmate may bring ~~up to~~ two persons to act as his advocates to this interview. The ~~inmate~~ prisoner shall be given an explanation of the reasons for the recommended action. The committee chairman shall note on the furlough plans in writing, on the inmate notification form that this interview did take place. He shall include the date of the interview and his signature. The recommendation, along with the application and all supporting documents shall be forwarded to the Board of Pardons.

20-2.4(1)-S470 BOARD OF PARDONS - DUTIES At its meeting, the board shall consider the recommendation received from the committee and shall view each applicant singly. The board is required to consider the prisoner's furlough plans, criminal history, and pertinent case material. The board is not bound by the committee information. The ~~applicant~~ inmate may bring two witnesses

from inside or outside the prison to testify in his behalf. The board may meet in executive session, without the ~~applicant~~ inmate to make its decision.

The board shall immediately notify the prisoner of its decision and provide the prisoner with a written decision within two (2) working days following adjournment. If the board disapproves the application, a written statement of the reasons shall be included. ~~sent to the applicant.--If the furlough committee had recommended disapproval, the written statement from the committee shall be sent through the board to the applicant unless the board wishes to write~~ its own statement to the applicant. This statement shall be sent within two working days of the meeting. ~~(The board shall have the responsibility to notify receiving county sheriff, and sentencing judge of the release of the furloughee.)~~

(New Rule) FURLOUGH COORDINATOR - DUTIES The Furlough Coordinator shall:

(1) Provide technical assistance and support to the furloughee and sponsoring agent(s);

(2) Review all data pertaining to proposed furlough plan and prepare Furlough Selection Grid to determine inmate's eligibility for the program;

(3) Contact supervising agents within first month of furlough and thereafter review the contract plans at 3 month intervals;

(4) Advise sentencing judge, county attorney and sheriff of prosecuting county as to inmate's proposed plan; direct reply to the Board of Pardons;

(5) Collect data and prepare monthly reports;

(6) Maintain proper documentation for case records;

(7) Performs public relations activities as required.

3. Rationale Statement.

The Department of Institutions has received numerous requests from persons who are directly affected by the work educational furlough rules. Further, there have been three attorney general opinions interpreting these particular rules as they relate to the Department of Institutions and the Montana Board of Pardons and Parole. Following several meetings between the staff of the Department and the Montana Board of Pardons and Parole, it was decided that new work educational furlough rules are necessary.

Further, due to an increase of staff in the work furlough area certain functions can be transferred to that position which will affect the changes required by the attorney general's opinions and make the program operate

with the best interest of the inmates of the Montana State Prison, and the people of the State of Montana.

4. Interested parties may submit their data, views or arguments orally or in writing concerning the proposed amendments or adoption of the new rule to Carolyn Zimmet, Bureau Chief, 1539 Eleventh Avenue, Helena, Montana 59601 or phone 449-5671 no later than June 25, 1978. The authority of the Department to amend the proposed rules based upon section 95-2223, R.C.M. 1947.

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 for a hearing and submit this request to Carolyn Zimmet, Bureau Chief, 1539 11th Avenue, not later than June 15, 1978. If the department receives requests for a public hearing on the proposed changes from more than 10% of the persons directly affected, or from the Administrative Code Committee of the legislature, a hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 35 based upon the current population in Montana State correctional facilities approximately 350 prisoners.

LAWRENCE M. ZANTO, Director
Department of Institutions

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

BEFORE THE COMMISSIONER OF THE
DEPARTMENT OF LABOR AND INDUSTRY

In the matter of the adoption of a rule providing for discovery)	NOTICE OF PROPOSED ADOPTION OF A RULE (for discovery procedures)
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 24, 1978 the Commissioner of the Department of Labor and Industry proposes to adopt a rule providing for discovery in contested case hearings.

2. The proposed rule provides as follows:

(1) In all contested cases discovery shall be available to the parties in accordance with Rules 26, 28 through 37 (except Rule 37(b)(1) and 37(b)(2)(d) of the Montana Rules of Civil Procedure in effect on the date of the adoption of this rule and any subsequent rule amendments thereto. Provided, however, all references to the "court" shall be considered to refer to the appropriate "agency"; all references to the use of the subpoena power shall be considered references to model rule 25; all references to "trial" shall be considered references to "hearing", all references to "plaintiff" shall be considered references to "a party"; all references to "clerk of court" shall be considered references to the person designated by the department head to keep documents filed in a contested case.

(2) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the agency in which the action is pending, the refusal to obey such agency order shall be enforced as provided in model rule 25.

(3) If a party seeking discovery from the agency in which the action is pending believes he has been prejudiced by a protective order issued by the agency under Rule 26(c) M.R.Civ. P., or if the agency refuses to make discovery, that party may petition the district court for review of the intermediate agency action under section 82-4216.

3. The rule is proposed pursuant to the requirements of the Administrative Procedures Act and also to facilitate the conduct of hearings.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to David E. Fuller, the Commissioner of the Department of Labor and

Industry, Box 202, Capitol Station, Helena, Montana no later than June 24, 1978.

5. The authority of the Commissioner to make the rule is based on Section 41-1314.2 R.C.M. 1947.

DAVID E. FULLER
Commissioner of the Department
of Labor and Industry

Certified to the Secretary of State this 15th day of May, 1978.

BEFORE THE DEPARTMENT OF STATE LANDS
AND
THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 26-2.10(10)-S10310, S10320, S10330, S10340, and S10350	)	NOTICE OF PUBLIC HEARING FOR THE AMENDMENT OF STRIP AND UNDERGROUND MINE RECLAMATION RULES 26-2.10(10)-S10310, S10320, S10330, S10340, and S10350

TO: All Interested Persons:

1. On June 15, 1978, at 1:30 P.M., a public hearing will be held in the Senate Chambers, State Capitol Building, Helena, Montana, to consider the amendment of rules 26-2.10(10)-S10310, S10320, S10330, S10340, and S10350.

2. The proposed amendments clarify and strengthen the Department's reclamation plan, backfilling and grading, blasting, hydrology, topsoiling, planting, and revegetation of strip mined area pursuant to Chapter 10 of Title 50, R.C.M. 1947.

3. A copy of the proposed rules may be obtained by contacting John F. North, Department of State Lands, Capitol Station, Helena, Montana 59601 (449-2074). The rules as proposed to be amended provide in summary as follows:

26-2.10(10)-S10310 Mining and Reclamation Plans - This rule sets performance standards for backfilling and grading, highwall reduction, buffer zones, and roads and railroad loops.

26-2.10(10)-S10320 Blasting - This rule sets performance standards for blasting operators and blasting shall be conducted in compliance with applicable laws and by qualified individuals; that a preblasting survey be conducted in certain instances, that the permittee give public notice of blasting schedules; and that a record of blasting be kept.

26-2.10(10)-S10330 Hydrology - This rule sets performance standards for minimizing disturbance to the hydrologic water monitoring, diversions, sedimentation, avoidance of acid-forming and toxic-forming drainage, restoration of groundwater systems, replacement of water supplies, preservation of the functions of alluvial valley floors, and minimizing hydrologic impacts of roads and other transport facitilities, and prevention of discharge into underground mine workings.

26-2.10(10)-S10340 Topsoiling - This rule sets forth performance standards for the removal, stockpiling, protection, and redistribution of topsoil.

26-2.10(10)-S10350 Planting and Revegetation - This rule provides performance standards for the revegetation of disturbed areas.

4. The rules are being proposed to bring Montana's strip mine reclamation program into compliance with the requirements of parts 715 and 716 of Title 30 of the Code of Federal Regulations, which implement the initial regulatory program of the Surface Mining Control and Reclamation Act of 1977 30 U.S.C. 1201 et seq. The Department anticipates that the rules will be in effect until the Department promulgates rules implementing its permanent program in late 1978 or early 1979. These rules are substantially similar to the emergency rules which are now in effect and were published in the Montana Administrative Register on April 24, 1978, beginning at page 520.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may be submitted to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, Montana 59601, any time before June 21, 1978.

6. Leo Berry, Jr., Commissioner, Department of State Lands, has been designated to preside over and conduct the hearing.

7. The authority of the Department of State Lands and Board of Land Commissioners to meet the proposed amendments are sections 50-1037 and 50-1038 R.C.M. 1947. The specific sections of law implemented are as follows:

S10310	50-1039, 1043, and 1044
S10320	50-1043
S10330	50-1043
S10340	50-1044
S10350	50-1045

Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State May 15, 1978

BEFORE THE DEPARTMENT OF STATE LANDS
AND THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I through VIII, pertaining to reclamation of strip and underground mined lands	))))	NOTICE OF PUBLIC HEARING FOR THE ADOPTION OF NEW STRIP AND UNDERGROUND MINE RECLAMATION RULES

TO: All Interested Persons:

1. On June 15, 1978, at 1:30 P.M., a public hearing will be held in the Senate Chambers, State Capitol Building, Helena, Montana to consider adoption of rules for the administration and enforcement of the Department's strip and underground mine reclamation program.

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

3. A copy of the proposed rules may be obtained by contacting John F. North, Department of State Lands, Capitol Station, Helena, Montana 59601 (449-2074). The proposed rules provide in summary as follows:

Rule I Applicability - This rule prohibits mining which constitutes an imminent danger to health or safety of the public or significant, imminent environmental harm and regulates pre-existing, non-conforming structures.

Rule II Definitions - This rule defines the terms to be used in subchapter 10 of Chapter 10.

Rule III Posting - This rule requires all authorizations to operate to be posted at the mine site.

Rule IV Postmining Uses - This rule enumerates allowable and prohibited postmining uses and sets forth criteria for approval of alternative postmining uses.

Rule V Disposal of spoil - This rule regulates disposal of spoil not required to achieve approximate original contour.

Rule VI Prime farmland - This rule defines the term "prime farmland" and makes special performance standards applicable to these lands.

Rule VII Signs and Markers - This rule provides specifications for mine site signs and markers.

Rule VIII Underground Mining - This rule defines the term "underground mining" and provides that underground mine operators must comply with applicable performance standards.

4. The rules are being proposed to bring Montana's strip mine reclamation program into compliance with the requirements of Parts 715 and 716 of Title 30 of the Code of Federal Regulations, which implement the initial regulatory program of the Surface Mining Control and Reclamation Act of 1977 30 U.S.C. 1201 et seq. The Department anticipates that the rules will be in effect until the Department promulgates rules implementing its permanent program in late 1978 or early 1979. These rules are substantially similar to Rules I, II, III, IV, VI, VIII, IX, and X of the emergency rules which are presently in effect and were published in the Montana Administrative Register on April 24, 1978 beginning at page 520.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may be submitted to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, Montana 59601, any time before June 21, 1978.

6. Leo Berry, Jr., Commissioner, Department of State Lands, has been designated to preside over and conduct the hearing.

7. The authority of the Department of State Lands and Board of Land Commissioners to make the proposed rules is based on sections 50-1037 and 50-1038, R.C.M. 1947. Those proposed rules which implement specific code section and the section implemented are as follows:

Rule IV 50-1045(b)
Rule V 50-1043, 1044, and 1045
Rule VI 50-1039, 1043, and 1045

Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State May 15, 1978

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF HORSE RACING

IN THE MATTER of the Proposed Adoption of a New Rule regarding Maiden Races - Montana Breds Preferred.	NOTICE OF HEARING on the Proposed Adoption of a New Rule regarding Maiden Races - Montana Breds Preferred.

TO: ALL INTERESTED PERSONS

1. On June 17, 1978 at 10:00 o'clock A.M. in the Canadian Room, Heritage Inn, Great Falls, Montana a public hearing will be held to receive testimony in the above entitled matter.

2. The rule as proposed was adopted and made effective as an emergency rule on May 5, 1978. Notice of such emergency rule was mailed on that date to all licensees conducting race meets and other affected groups. While this rule is now in effect, the Board is instituting proceedings by this notice to adopt the rule as a permanent rule of the Board.

3. The rule as it now exists as an emergency rule and as proposed for permanent adoption reads as follows:

> "I. MAIDEN RACES - MONTANA BREDS PREFERRED (1) For the purposes of further encouraging the breeding within the state of valuable purebred registered horses and to increase the market value and saleability of said horses, every maiden race written at Montana pari-mutuel race tracks shall be written with Montana bred maidens preferred."

The reason for the rule is stated in the preamble to the rule itself.

4. All interested and affected persons may present written comments prior to or at the hearing in lieu of or in addition to oral testimony. Written comments should be addressed to the Board of Horse Racing, Lalonde Building, Helena, Montana.

5. The Board of Horse Racing or its designee shall preside over and conduct the hearing.

6. The authority of the Board of Horse Racing to make the proposed adoption is based on Section 62-505 R.C.M. 1947.

DATED this 15th day of May, 1978.

BOARD OF HORSE RACING
RICHARD HEARD, MEMBER

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

Certified to the Secretary of State 5-15, 1978
MAR NOTICE NO. 40-3-46-14

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

IN THE MATTER OF THE Proposed) Adoption of new rules implementing section 66-3203,) R.C.M. 1947.	)	NOTICE OF PROPOSED ADOPTION NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On June 26, 1978, the Board of Psychologists proposes to adopt new rules implementing section 66-3203, R.C.M. 1947.

2. The rules as proposed will define certain terms used in the exemptions from the licensing act stated in sub-sections (2)(a) and (2)(h) of section 66-3203 and will read as follows:

(1) Section 66-3203 (2)(a) exempts from licensure and does not prevent "qualified members of other professions such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training and the code of ethics of their respective professions if they do not hold themselves out to the public by a title or description incorporating the words 'psychology' or 'psychologist'."

For purposes of this section, any person to be exempt must be a subscribed member of a recognized and organized profession, which profession is reasonably similar to those stated in the above quoted section. Such professional organization must have an established published code of ethics which demands mandatory compliance for membership in the profession. Furthermore the work of the person to be exempt must be restricted to the area or areas in which they have received education and/or training. Furthermore as the statute proscribes in any event such person may not use any title incorporating the words psychology or psychologist.

The reason for the proposed rule is that the Board views the statutory exemption from licensure as a narrow exemption to be strictly adhered to. The Board feels that the legislative intent mandates such interpretation if the interest of the consuming public is to be served, since the formal education experience and examination provisions required by licensure will not have to be met. Thus, consistent with the specific words mentioned in the above quoted exemption section, the Board feels that the profession must have sufficient internal mandatory controls to guarantee competent service, and to which guarantee the proposed rule is intended to serve.

(2) Sub-section (2)(h) of section 66-3203 exempts from licensure "activities of a psychological nature

on the part of persons who are salaried employees of accredited academic institutions, governmental agencies, research laboratories, and business corporations, if these employees are performing the duties for which they are employed by the organization, and within the confines of the organization."

For purposes of defining the scope of the exemption for business corporations, the business corporation must be registered as such with the Secretary of State of the State of Montana and the activities of a psychological nature to be exempt may be performed only by employees thereof and employee status exists only where the employee is on a fixed salary and does not share in the profits of, or incur expenses or liabilities of the corporation. To further qualify for an exempt status, the employee may perform only that work of a psychological nature which the corporation has contracted for and may not perform any other such work outside the scope of his employment.

For the reasons stated above the Board feels the exemption must be narrowly construed and thereby proposes these definitional restrictions.

3. Interested parties may submit their data, views or arguments concerning the proposed adoption of new rules in writing to the Board of Psychologists, Lalonde Building, Helena, Montana. Written comments in order to be considered must be received no later than June 22, 1978.

4. If the Board of Psychologists receives requests for a public hearing on the proposed adoption of new rules from ten percent (10%) or 25 or more of the 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.

5. The authority of the Board of Psychologists to make the proposed adoption of new rules is based on Section 66-3205, R.C.M. 1947.

DATED this 15th day of May, 1978

BOARD OF PSYCHOLOGISTS
JAN WOLLERSHEIM, Ph.D.
CHAIRMAN

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

Certified to the Secretary of State 5-15, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING FOR
of rule ARM 4-2.12(1)-S1250) PROPOSED AMENDMENT OF RULE
ARM 42-2.12(1)-S1250 regarding liquor samples.

TO: All Interested Parties

1. On June 27, 1978, at 9:30 a.m. a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of rule MAC 42-2.12(1)-S1250. The hearing set for April 27, 1978 was postponed and this Notice is being published to give all interested parties adequate opportunity to appear and submit comments.

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

42-2.12(1)-S1250 SAMPLES (1) Definitions.

(a) "Agent" shall be that definition as provided in MAC 42-2.12(1)-S1200(1).

(b) "Department" shall be that definition as provided in Section 2-1-107(6).

(c) "Vendor" shall be that definition as provided in MAC 42-2.12(1)-S1200(3), it shall also include the principal or employer of an agent.

(d) "Sample" shall mean a quantity of liquor no greater than one fifth (25.6 ounces) or its metric equivalent of 750 ml (25.4 ounces) presented by an agent as representative of such characteristics as quality, taste, aroma and color, of a particular alcoholic beverage. No container of alcoholic beverage shall be treated as a sample under the Montana Alcoholic Beverage Code or regulations promulgated thereunder, if the container is not listed as a sample on the distributor's wholesaler's books for federal and state tax purposes and on any other reporting forms required by law.

(2) A vendor shall be permitted to use as samples not more than twenty-four cases of liquor during any calendar year. This allotment shall include all brands of liquor manufactured, produced or sold by the vendor. ~~Such samples of liquor shall be purchased only through the State liquor Stores at retail price.~~ A separate order for samples shall be placed for each registered agent, and the agent's name and permit number shall appear on the order. The vendor shall file with the Department a statement setting forth the territories and names of all registered agents under his supervision. ~~Each authorized agent shall keep a permanent stock ledger record of all samples purchased by him and distributed by him to any person as provided in this section together with quantity and brand.~~

(3) Registered Agents shall prepare and submit to the Investigation Division, Department of Revenue, a "Liquor Representative's Monthly Sample Report". These reports shall be prepared on such forms as are prescribed by the Department of Revenue. The report shall be filled out completely and verified by the reporting registered agent.

(4) The report shall be due 15 calendar days following the end of each month. Timely mailing shall be considered as timely filing. If the reports are not filed by the required due date, the Department may, in its discretion, invoke its powers as described in Section 4-4-402.

(5) Samples are obtainable only at State Liquor Stores approved by the Department of Revenue at the prevailing retail price. For every purchase the agent must obtain a Retail Liquor Dealer receipt from the State Liquor Store, where the sample is purchased. Said receipts must be maintained by the agent for a period of three (3) years subject to inspection by the Department under subparagraph (7) of this regulation.

(6) The registered agent as well as his or her principal (vendor) shall be held jointly and severally accountable for the filing of complete and accurate reports. Failure to complete reports or to file said reports within the prescribed time may result in action being taken by the Department under Section 4-4-402.

(7) The Department may at any reasonable time and place examine the books and records of the registered agent or vendor for purposes of determining compliance with the requirements of this regulation. Reasonable time and place shall be construed as normal business hours. Thirty (30) calendar day's notice shall be given for any inspection conducted under this regulation.

3. The purpose of this proposed amendment is to strengthen the regulation and enforcement of sample reporting.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing, or may address comments in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than June 27, 1978.

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

6. The authority of the Department of Revenue to make the proposed amendment is based on Section 4-1-303, R.C.M. 1947. Implement Section 4-3-103.

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State May 15, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) of rule ARM 42-2.22(1)-S2255)	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE ARM 42-2.22(1)-S2255 regarding Montana Appraisal Plan

TO: All Interested Parties

1. On June 27, 1978, at 1:30 p.m. a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of rule MAC 42-2.22(1)-S2255.

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

42-2.22(1)-S2255 MONTANA APPRAISAL PLAN (REVISED)

(1) The Department of Revenue has herein adopted and incorporated the "Montana Appraisal Plan (Revised)", by reference. Copies of the plan may be obtained from the Property Assessment Division of the Montana Department of Revenue, Mitchell Building, Helena, Montana 59601.

(2) All real property and improvements thereto shall be revalued in accordance with and pursuant to the Montana Appraisal Plan (Revised).

3. The Department has revised the Montana Appraisal Plan previously adopted by the Department to conform to the requirements of Patterson v. State Department of Revenue, 557 P. 2d 798, and §84-429.14, R.C.M. 1947.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing, or may address comments in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than June 27, 1978.

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

6. The authority of the Department to make the proposed amendment is based on Patterson v. State Department of Revenue, 557 P. 2d 798, and implements §84-429.14, R.C.M. 1947.

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State May 15, 1978.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rules 1.2.101 and 1.2.110 Relating to the Publication Schedule for the Montana Administrative Register.	)))))))	NOTICE OF PROPOSED AMENDMENT OF RULES 1.2.101 PROCEDURES FOR FILING OF THE INITIAL RULES, NEW RULES AND RULES AMENDING OR REPEALING PRIOR RULES, AND 1.2.110 UPDATING THE CODE PROCEDURES. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On June 26, 1978, the Secretary of State's office proposes to amend rules 1.2.101 and 1.2.110 which apply to the schedule for the printing and distribution of the Montana Administrative Register.

2. The rules as proposed to be amended provide as follows:

1.2.101 PROCEDURES FOR FILING OF THE INITIAL RULES, NEW RULES AND RULES AMENDING OR REPEALING PRIOR RULES (1) Remains the same.

(2) Remains the same.

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

(a) As has been explained in the Montana Administrative Procedures Act and in the attorney general's model rules, the departments and agencies assigned thereto for administrative purposes must give public notice of their intention to adopt, amend or repeal any rule after the deadline for submitting initial rules. The contents of the notices are as prescribed by the MAPA and the attorney general's model rules. The forms for the notices will be as set down in the attorney general's model rules. All notices will be signed in the position designated by the model notice forms. Each form will be signed by the head of the department (or by the chairman of the governing board). In the case of a notice issued by an agency assigned for administrative purposes, the head of that agency (or chairman of the governing board) will sign. The secretary of state is required to publish the register at least once a month. ~~Therefore a department must submit its notices on or before the 15th day of each month according to the schedule set by the secretary of state. The notice will be published in that month's register.~~ , however, beginning in July, 1978, the register will be published on a bi-weekly basis. An agency must submit its notices according to the submission schedule deadline set by the secretary of state. If a notice is submitted after the submission deadline it will not be published until the ~~following month~~ next publication date. It should be noted that the MAPA requires that agency action may not be taken until at least 30 days after the notice is published in the register. ~~(We plan to publish the register twice a month beginning sometime in 1978, at which time the agencies will be notified of new~~

~~filing-dates.~~)

(4) Remains the same.

(5) Remains the same.

(6) Remains the same.

1.2.110 UPDATING THE CODE--PROCEDURES (1) Remains the same.

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

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

3. This rule is proposed to be amended in response to a survey conducted by the Secretary of State's office in April, 1978 to obtain input from rule publishing agencies regarding a bi-weekly publication of the Montana Administrative Register. The majority of the agencies felt that a bi-weekly publication would substantially shorten the time and establish a more orderly schedule for rulemaking. Certain agencies had conflicting dates between the mid-month filing date and their agency's board meetings thereby causing a delay in their rulemaking process.

The comments received from agencies against the bi-weekly publication were related to the increased cost of publication and confusion in regard to filing, publishing, adoption and effective dates.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Leonard C. Larson, Room 202, Capitol Building, Helena, Montana 59601, no later than June 22, 1978.

5. The authority of the Secretary of State to make the proposed amendment is based on Section 82-4206, R.C.M. 1947.

Dated this 15th day of May 1978

Frank Murray

FRANK MURRAY
Secretary of State

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

In the matter of the amendment of ARM 44-3.10(6)-S1086, defining "ballot issue" for purposes of the Campaign Practices Act and prescribing reporting requirements for issue committees	NOTICE OF PROPOSED AMENDMENT OF ARM 44-3.10(6)-S1086, regarding ballot issues and committees supporting or opposing them. NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On June 25, 1978, the Commissioner proposes to amend ARM 44-3.10(6)-S1086, which defines "ballot issue" for purposes of the Campaign Practices Act, and sets forth reporting requirements for organizations supporting or opposing issues before and after their certification.

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

44-3.10(6)-S1086 BALLOT ISSUE - DEFINITION: PERSONS SUPPORTING OR OPPOSING (1) An issue as defined in section 23-4777(3), R.C.M. 1947, becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed.

~~(2) Committees which have cash on hand at the time of certification (which they wish to use in an election) shall disclose on their first report the source(s) of those funds, including the information required by section 23-4779 and these rules. The cash balances are assumed to be composed of those contributions most recently received by the committee.~~ If and when an issue is certified, contributions received and expenditures made (except for expenses of printing and circulating petitions) to support or oppose it prior to certification are contributions and expenditures as defined in section 23-4777(5) and (6) and these rules.

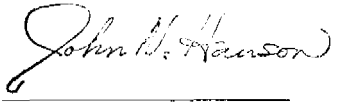
(3) An organization which has received such contributions or made such expenditures is a political committee as defined in section 23-4777(8) and these rules. Such a committee must file a statement of organization within five days of certification, and such contributions and expenditures must be reported on the committee's initial report.

3. The above amendment substantially duplicates an emergency amendment to the same rule made on April 15, 1978 (MAR Notice No. 44-3-10-9). The rationale for its adoption is set forth at greater length in that notice. Briefly, the prior version of the rule was capable of a construction which could substantially or entirely relieve organizations supporting or opposing issues from any duty to report the source or disposition of funds received or spent prior to an issue's certification. This interpretation was unintended by the Agency and

not in accord with the stated purpose of the Campaign Practices Act. The amendment will require reporting of such funds, while maintaining the exemption for reporting of expenses of printing and circulating petitions. In the event certification does not occur, no reporting is required (as before).

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing no later than June 23,1978 to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601. The number of persons directly affected by the proposed amendment is unknown to the agency, but if 25 or more persons directly affected request a hearing, a hearing will be held after appropriate notice is given.

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



JOHN N. HANSON
Commissioner of Campaign
Finances and Practices

Certified to the Secretary of State May 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)-S11490 pertaining to third party liability.	NOTICE OF PROPOSED AMENDMENT OF A RULE PERTAINING TO THIRD PARTY LIABILITY. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On June 24, 1978, the State Department of Social and Rehabilitation Services proposes to amend rule 46-2.10(18)-S11490 which deals with third party liability.

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

46-2.10(18)-S11490 THIRD PARTY LIABILITY ~~AND SUBROGATION~~ (1) The Department is subrogated to the recipient's right to third party recoveries to the extent necessary to reimburse the Department for medical assistance provided, when the third party's liability is established after assistance is granted, and in any other case in which the liability of the third party exists, but was not treated as a current source of payment.

~~(a) It is the responsibility of the provider to inquire of the Medicaid patient and/or his/her representative about other identifiable sources of payment, which includes third party liabilities, for payment for their services. The providers must bill all identifiable sources of payment prior to billing Medicaid.~~

~~(b) The Department will not withhold payment in behalf of an eligible individual because of third party liability. When such liability or the amounts thereof cannot be established or is not available to pay the individual medical expense within 180 days of receipt of the billing by the Department, the Department will make payment within 180 days of receipt of billing.~~

(a) For purposes of section (1) ~~Third~~ third party includes an individual, institution, corporation, public or private agency who is or may be liable to pay all or part of the medical cost of injury, disease or disability of an applicant or recipient of medical assistance.

(2) Before Medicaid payments can be made to providers, all other identifiable sources of payment must be exhausted by recipients and/or providers, as follows:

(a) For known Medicaid-eligible individuals, the provider shall use the usual and customary procedures which it uses for inquiring about sources of payment for non-Medicaid patients. This inquiry includes obtaining the identity of any potentially liable tortfeasor if and only if such identity may be learned using the provider's

usual and customary inquiry procedures.

(b) Prior to billing Medicaid for services rendered to a Medicaid-eligible individual, the provider shall bill any other source of payment identified by means of the provider's usual and customary inquiry procedures, and which has been properly assigned by the individual to the provider if the provider requires assignment, except that the provider is not required to bill or to pursue in any way any potentially liable tortfeasor. The provider shall not be required to send to an identified source of payment more than one billing statement.

(c) For bills for which no source of payment is identified other than a potentially liable tortfeasor and Medicaid, the provider shall bill Medicaid indicating that services were rendered as the result of a possible tortious act, and, if known, the identity of the tortfeasor.

(d) For bills sent to insurers or other identified sources of payment:

(i) If the provider receives no payment or rejection within 45 days of the date of billing, it shall bill Medicaid noting the lack of timely response. Medicaid will make payment for services rendered to the Medicaid-eligible individual in all cases within 180 days of the date of receipt of the bill.

(ii) If the provider receives partial payment or a rejection of the claim within 45 days, it shall bill Montana Medicaid noting the rejection or the amount of credit. Montana Medicaid will make payment for services rendered to Medicaid-eligible individuals as soon as the normal course of business allows, and in all cases within 180 days of receipt of the bill.

(iii) Montana Medicaid shall pay 90 percent of all claims for which no further written information or substantiation is required in order to make payment within 30 days of receipt of such claims, and shall pay 99 percent of such claims within 90 days of receipt of such claims.

(iv) In the event the provider receives payments from Montana Medicaid and one or more third-party sources, any amounts over and above the Medicaid claim shall be refunded by the provider to the Montana Medicaid Program. At the option of the provider, refunds shall be accomplished either by mailing a check made out to "State Department of Social and Rehabilitation Services" directly to that Department at Box 4210, Helena, MT 59601, or by notifying the Department of SRS in writing of the receipt and the amount of payment over and above the Medicaid claim, which amount shall then be automatically deducted from future payments to the provider. Regardless of the method of

repayment chosen, the provider shall identify on the check or notifying document the patient who received services for which the double payment was made by name and claim number and specify the dates of service for which double payments were received.

(3) In the event a provider delivers to a known recipient of medical assistance a copy of a billing statement for services for which payment has been received or is being sought from the Medicaid program, the provider must clearly indicate on the recipient's copy that the Department is subrogated to the right of the recipient to recover from liable third parties.

(a) The words "Subrogation Notice--Billed to Medicaid," or a similar statement giving clear notice of the Department's subrogation rights, indelibly stamped, typed or printed on the statement shall be sufficient to meet the requirement of section (3).

(b) If a provider fails to meet the requirements of section (3) the Department may withhold or recover from that provider any amount lost to the Department as a result of that failure.

(4) Referrals shall be made to the Program Integrity Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601, for examination. The Program Integrity Bureau may send referrals to the Department of Revenue for recovery.

3. The rationale for adopting the amendments is to implement Section 71-241.1, R.C.M. 1947, by:

a. requiring that liable third parties be considered the primary source of payment for medical services;

b. assuring that payment will be made within a reasonable period of time, regardless of determination of third party liability;

c. assuring that third parties are notified that the Department is subrogated to the rights of the recipient of medical services; and

d. defining the circumstances under which the Department will seek reimbursement from a third party, the amount of reimbursement which may be sought, and the parties from whom reimbursement may be sought.

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

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June 22, 1978.

5. The authority of the department to make the proposed amendment is based on section 71-1511 et. seq., R.C.M. 1947. The implementing authority is based upon section 71-1511 et. seq., R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1978.

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

In the Matter of the adoption of rules pertaining to emergency grants-in-aid to counties and the amendment of Rule 46-2.10 (38)-S102040 pertaining to payment procedures	)))))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO EMERGENCY GRANTS-IN-AID TO COUNTIES AND PROPOSED AMENDMENT OF RULE 46-2.10(38)-S102040 PERTAINING TO PAYMENT PROCEDURES

TO: All Interested Persons

1. On June 14, 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 adoption of rules pertaining to emergency grants-in-aid to counties and the amendment of ARM 46-2.10(38)-S102040 pertaining to payment procedures.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana and the proposed amendment replaces present Rule 46-2.10(38)-S 102040 found in the Administrative Rules of Montana which pertains to payment procedures.

3. The proposed rules provide as follows:

Rule I EMERGENCY GRANTS-IN-AID TO COUNTIES, WHEN COUNTIES MAY APPLY AND AUTHORITY (1) A county may apply for an emergency grant-in-aid when it meets all the conditions set forth in section 71-311(1), R.C.M. 1947, any applicable conditions established in section 16-1907, R.C.M. 1947, and all conditions of the Department set out below.

(2) Authority for the adoption of these rules is given to the Department under section 71-210, R.C.M. 1947, and is in accordance with section 71-311, R.C.M. 1947, section 71-106, R.C.M. 1947, section 71-1511, R.C.M. 1947 and section 16-1907, R.C.M. 1947. (History: Sec. 71-210, 71-311, 71-106, 71-1511, 16-1907, R.C.M. 1947; NEW,)

Rule II EMERGENCY GRANTS-IN-AID TO COUNTIES, AMOUNT OF GRANT (1) A grant-in-aid will be awarded only for the portion of a poor fund deficiency which is attributable to non-medical General Assistance, the county share of Federal-State matching programs, or medical services for indigent persons except those covered by Medicaid. (History: Sec. 71-311, 71-210, 71-1511, R.C.M. 1947; NEW,)

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Rule III EMERGENCY GRANTS-IN-AID TO COUNTIES, DEFINITIONS (1) "Indigent person" means any individual who is eligible for state or county financial or medical assistance under Title 71, Chapters 3, 5 or 15, R.C.M. 1947.

(2) "Non-indigent person" means any individual who is not an indigent person as defined in (1), above.

(3) "County facility" means a county hospital, county nursing home, or other facility operated by a county to provide health care services.

(4) "Medical services" includes any form of medical treatment or supplies, or care, normally provided to indigent persons under the Medicaid program or County General Assistance medical programs. (History: Sec. 71-311, R.C.M. 1947; NEW,)

Rule IV EMERGENCY GRANTS-IN-AID TO COUNTIES, INFORMATION REQUIRED FOR GRANTS (1) An application by a county for an emergency grant-in-aid must be submitted on a form prepared by the Department and must contain all information required by the form, including but not limited to the following:

(a) Detailed information and documentation to show:

(i) All sources of revenue to the county poor fund, and all amounts received from each source during the county fiscal year for which the application is made;

(ii) All expenditures from the county poor fund for the fiscal year in which the application is made, including both the amount and purpose of the expenditures;

(iii) Projected revenues to the poor fund during the remainder of the fiscal year for which the application is made, including both the amount and source of the projected revenues;

(iv) Projected expenditures from the poor fund during the remainder of the fiscal year for which the application is made, including both the amount and purpose of the expenditures; and

(v) An explanation of why the county is experiencing the county poor fund deficiency upon which the application is based.

(b) Detailed documentation, including all relevant fiscal information, to demonstrate that no part of the poor fund deficiency upon which the application is based was caused by expenditures for services, including medical services, to non-indigent persons.

(c) Detailed documentation, including all relevant fiscal information, to demonstrate that the rates for services, including medical services, charged by a county

facility to indigent persons do not exceed the rates charged for like services to non-indigent persons.

(2) If the county operates a county facility, the application must contain the following:

(a) The name of the facility;

(b) The fund used for fiscal operations of the facility;

(c) Whether or not the facility limits admissions or services solely to indigent persons; and

(d) If the facility serves or admits both indigent and non-indigent persons, percentage of the facility's admissions of, and other services provided to:

(i) indigent persons; and

(ii) non-indigent persons. (History: Sec. 71-311, R.C.M. 1947; NEW)

Rule V EMERGENCY GRANTS-IN-AID TO COUNTIES, CONDITIONS FOR GRANTS (1) A county will be awarded an emergency grant-in-aid only if it supplies all information and meets all other conditions required by applicable Montana law and these rules.

(2) A county which operates a county facility will be awarded an emergency grant-in-aid only if it meets, in addition to all other conditions imposed by law, one of the following conditions:

(a) The county must limit admissions to or services provided by any county facility solely to indigent persons; or

(b) The county must operate any county facility out of a fund separate and distinct from the county poor fund, and must bill the county poor fund or other appropriate party (such as Medicaid) for services provided to indigent persons. Rates for services provided to indigent persons by such a facility may not exceed the rates for like services charged to non-indigent persons; or

(c) The county, if it operates a county facility out of the county poor fund, must use a fiscal record keeping system by which it can demonstrate that no part of the poor fund deficiency upon which the application is based was caused by expenditures for services for non-indigent persons. Rates for services provided to indigent persons by such a facility may not exceed the rates for like services charged to non-indigent persons.

(3) Applications which fail to supply all required information, or which fail to meet all required conditions, will be denied. (History: Sec. 71-311, 71-210, R.C.M. 1947; NEW)

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4. The proposed amendment replaces present rule 46-2.10(38)-S102040 found in the Administrative Rules of Montana and provides as follows:

46-2.10(38)-S102040 PAYMENT PROCEDURES ~~(1)--Claims for County Medical services are made by the provider on an individual county claim form and submitted to the county department of the county which is financially responsible for the case.~~

(1) A health care provider, including providers which are health care facilities operated by a county, must submit every claim for county medical services to the county department of the county which is financially responsible for the case.

(2) Each claim must be submitted to the county department on an individual county claim form.

(3) The appropriate county department must approve every such claim prior to payment.

(4) A provider which is a health care facility operated by a county must follow the foregoing billing procedures in the submission of claims for approval to the county department, and may not use an internal accounting write-off procedure for the purpose of paying such claims. (History: Title 71, Chapter 3, especially Section 71-308, R.C.M. 1947; NEW)

5. The rationale for the emergency grants-in-aid rules is that it has become imperative that the Department be able to determine whether or not monies expended for grants-in-aid to counties is expended for proper purposes and in accordance with all applicable laws. This necessitates new rules requiring the counties to provide specific information and limiting the purpose for which grants-in-aid monies may be paid.

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

7. The Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, has been designated to preside over and conduct the hearing.

8. The authority of the agency to make the proposed rule is based on section 71-311, R.C.M. 1947.

Patricia E. Mahoney
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1978.

Mar Notice No. 46-2-149

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

In the matter of the adoption of rules pertaining to county medical assistance and the repeal of Rules 46-2.10(38)-S 101950, 46-2.10(38)-S101960, 46-2.10(38)-S101970, 46-2.10(38) -S101980, and 46-2.10(38)-S101990)	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO COUNTY MEDICAL ASSISTANCE AND THE REPEAL OF RULES 46-2.10(38)-S101950, 46-2.10(38)-S101960, 46-2.10 (38)-S101970, 46-2.10(38) -S101980, and 46-2.10(38) -S101990

TO: All Interested Persons

1. On June 15, 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 adoption of rules pertaining to county medical assistance and the repeal of rules ARM 46-2.10(38)-S101950, 46-2.10(38)-S101960, 46-2.10(38)-S101970, 46-2.10(38)-S101980, and 46-2.10(38)-S101990.

2. The rules proposed to be repealed can be found on pages 46-94.39 through 46-94.41 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE I GENERAL (1) Medically Needy persons may apply to county welfare departments in the county in which they are residing for medical aid and hospitalization care.

(2) "Medically Needy Persons" for the purposes of this Sub-Chapter 38 of the Economic Assistance Division are those persons who are eligible for General Relief as provided in R.C.M. 1947, Title 71, Chapter 3, and meet the requirements as set forth in this Sub-Chapter.

RULE II APPLICATION FOR COUNTY MEDICAL CERTIFICATION

(1) Application for County Medical benefits must be filed prior to receiving such services except when bonafide emergencies preclude such prior application.

(a) Emergency application procedure: Application by an individual for payment of medical services rendered to him under emergency circumstances may be effective retroactively for five days prior to notice of intent to apply for payment of said services.

(b) Retroactivity beyond the above five day limit may be allowed at the discretion of the county welfare board upon good cause shown for failure to meet said five day

limit; but in no case shall responsibility be assumed by a county for services rendered more than forty five days prior to application or of notice by the individual of intent to apply.

(2) Notice of intent to apply must be filed by the individual, a responsible relative, or in cases where the individual is not conscious and has no known relatives, the intent will be made by a representative of the county department of public welfare.

(3) Applications are to be processed within the county within 30 days of the date of application, provided, however, payment for services may be delayed until any pending Medicaid application is determined.

(4) When applications are received by a county welfare department on behalf of a person who is the legal responsibility of another county in the state, the application form with all supporting documents shall be mailed within 10 working days to the county of legal residence herein after defined. Failure of the initiating county to conform to this time limit will result in financial responsibility attaching to the initiating county for all bills incurred up to the date of mailing. Inability to determine the responsible county or applicant's legal residence will be justification for delays exceeding ten days, but not greater than 20 days.

(5) Applicant must be notified by the county of its ruling upon applicant's application. If properly authorized by applicant, the provider of medical services shall be also notified of county's ruling.

(6) Upon receipt of an application for County Medical certification, the county welfare department will make a determination of the willingness of certain relatives to meet the need in full or in part, as required in Sections 71-233 through 71-240 of the Revised Codes of Montana, 1947.

RULE III COUNTY RESIDENCY (1) For determination of applicant's county residency requirements, reference is made to R.C.M. 1947, Section 71-302.2. That statute is interpreted to mean that an individual for the purpose of County Medical liability is the responsibility of the county with which said individual has the most significant contacts. In determining with which county an applicant has the most significant contacts, the length of stay in a county shall be considered as a factor. Other factors to be considered are:

(a) Ownership of real property in a county.

(b) Residence of the immediate family in a county.

(c) Payment of taxes, including licensure of automobile or other licensure, in a county.

(d) Patterns of returning to a county after short stays elsewhere.

(e) The expressed intent of an applicant to remain in a county or return to a county permanently.

RULE IV SCOPE AND DURATION OF SERVICES (1) Counties are not required to pay for services which are medically inappropriate. Each county should have a method of reviewing medical claims for appropriateness. Methods of review may include:

(a) Review by county doctor or other medical professional contracted with by the county.

(b) Consultation with providers to assure good communications and relationships.

(c) Requiring that utilization review procedures used for Medicaid and Medicare patients be applied to County Medical cases.

(d) Submission of questionable or suspect cases to the Medical Assistance Bureau for referral under the Department's contract with the Montana Foundation for Medical Care.

(2) As a minimum, County Medical plans must provide needed hospitalization, physicians's services, and prescribed medications. At the option of individual counties, services in addition to basic services may be offered.

(a) Counties are not obligated to pay for any service in behalf of County Medical or Medicaid eligible persons which is supplemental to, a substitute for, or a restoration of any benefit excluded from the Montana Medicaid program.

(3) Counties may provide medical services by employing or contracting with specific providers, or restricting availability of services not yet rendered to county owned and/or county operated facilities or at the option of the county may authorize freedom of choice by eligible persons.

(4) The duration of certification for County Medical services will, as a minimum include a length of time sufficient to cover the acute phase of an illness existing at the time of application. The duration of certification beyond that limit will be the option of each county.

(5) Persons found eligible for County Medical benefits shall be informed in writing as provided in S101960(5) of these rules with notification defining the method by which services are to be obtained and specifying the duration of certification.

RULE V ELIGIBILITY, GENERAL (1) Not withstanding other requirement as defined in this section, all persons certified for County Medical benefits must conform with

those requirements applicable to General Assistance eligibility listed in 46-2.10(34)-S11910 of these rules.

RULE VI ELIGIBILITY, INCOME (1) Applicants and recipients whose income is at or below 300% or the department's standard for medical assistance for the size of the household will be eligible for county medical benefits.

(a) Those individuals or families whose income is within 133% of the medical assistance standard will be certified without respect to an obligation by the recipient to pay any portion of authorized services.

(b) Those individuals or families whose income is between 133% and 300% of the medical assistance standard will be certified subject to a deductible, equal in the amount to six times the amount of monthly income which is in excess of 133% of the medical assistance standard, or equal to the amount of monthly income which is in excess of 133% of the medical assistance standard multiplied by the number of months in which the income exceeded the standard, whichever is the lesser.

(i) Said deductible will apply to those benefits which would otherwise be the obligation of the county.

(ii) The recipient must designate those medical providers to whom the deductible will be applied.

(2) The income of all members of intact, nuclear families (spouses and minor dependent children) will be counted in determining eligibility. Unborn children when pregnancy is verified will be considered in determining household size.

(3) Applicants or recipients, except for nursing home patients, whose income exceeds current medical assistance standards for the size of the household by 300% or more are not considered eligible for the income requirement. However, persons in nursing homes may be eligible without income limits subject to such persons spending all their income over $25.00 per month for their medical needs.

(4) Income is defined as actual gross income from any and all sources. Income may be adjusted by deducting mandatory withholdings from earned income.

(a) Monthly income is to be determined by some documented means. Documentation may include, but is not limited to:

(i) current wage statements

(ii) benefit notices from Employment Service, Social Security, Veterans' Administration, Workmens Compensation Division or similar agencies,

(iii) most recent tax return of self-employed persons.

(b) Income received on other than a monthly basis is to be converted to monthly income by pro-rating.

(c) Any deductible which is the liability of a recipient who fails to acquire other income may be satisfied by the recipient fulfilling a work requirement in those counties which conduct General Relief programs. Credit for the deductible will be earned at the rate of minimum wage.

(5) If need continues beyond the month in which the initial determination is made, eligibility from the income standpoint may be recomputed using the foregoing criteria and procedure. Recomputation may be based on the request of a denied applicant or at the discretion of the county department.

(a) Increase in the amount of income received by a recipient is grounds for reconsidering eligibility on both a current and retroactive basis.

4. The department proposes to adopt new rules governing county medical assistance in order to clarify the procedures and criteria for establishing eligibility, and to specify the types and amounts of services provided in the program. The intent of the proposed rules is to clearly establish the conditions under which county medical assistance is available to the needy persons within a county in conformity with existing state statutes and case law.

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

6. The Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section 71-308(4), R.C.M. 1947.

Patricia E. Malley
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1978.

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

In the matter of the adoption of rules pertaining to property limitations and the repeal of ARM Rule 46-2.10(14)-S11210	))))))	NOTICE OF PROPOSED ADOPTION OF A RULE PERTAINING TO PROPERTY LIMITATIONS AND REPEAL OF ARM RULE 46-2.10(14) -S11210. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On June 24, 1978, the State Department of Social and Rehabilitation Services proposes to adopt a rule pertaining to property limitations and repeal ARM Rule 46-2.10(14)-S11210.

2. The rules proposed to be repealed can be found on pages 46-77 and 46-77.1 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

Rule I PROPERTY LIMITATIONS (1) General Rule: To arrive at a determination of whether a condition of need exists, the department shall evaluate real and personal property resources which are currently available to applicants for or recipients of assistance, and shall apply the limitations set out in this rule. Real and personal property resources in excess of the limitations established in this rule shall disqualify an individual for assistance.

(2) Definitions: For purposes of this rule, the following definitions apply:

(a) "Real property" means land or buildings, including but not limited to a house and lot, or a trailer affixed to land or any other structure or appurtenance affixed to land so as to become a part of the real property.

(b) "Lot" means: a building site of a size in accordance with any applicable zoning ordinance for the area in which the lot is located; or a rural plot.

(c) "Rural Plot" means the smallest subdividable acreage allowable under a county ordinance for the area in which the lot is located, except that the Department may approve an exception to this provision for good cause.

(d) "Home" means the applicant or recipient's principle residence, including a house, a trailer, or other residential building.

(e) "Personal Property" means any property not defined in this rule as real property, including but not limited to cash, liquid assets such as stocks, bonds, postal savings, and other savings, checking accounts, other negotiable instruments, and furniture and livestock.

(f) "Currently available" means both when actual available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

(3) General Property Limitations: The value of all real and personal property owned by an applicant or recipient shall be included as currently available resources of the applicant or recipient for purposes of determining eligibility for assistance, unless such property is specifically excluded by this rule.

(4) Real Property Exclusions: The following real property is excluded from treatment as currently available resources:

(a) The applicant or recipient's home and the lot on which it sits, regardless of value;

(b) The applicant or recipient's income producing property necessary for self-support, regardless of value, if such property produces a reasonable rate of return. Income from such property, less all costs of producing the income, shall be deducted from assistance payments.

(c) Other real property of a value which, when combined with the value of personal property excluded under section (5)(a), does not exceed the appropriate maximum exclusion under that section.

(5) Personal Property Exclusions: The following personal property is excluded from treatment as currently available resources:

(a) Cash, liquid assets such as stocks, bonds, postal savings, other savings, checking accounts, other negotiable instruments, and the cash or loan value of life insurance or livestock, in a total amount of all such assets not to exceed: $1,500.00 for a single person; $2,250.00 for two persons; and an additional $100.00 for each other eligible person in the household.

(b) Household goods, clothing, other essential personal effects; and home produce and livestock-producing food for family use and consumption only.

(c) Essential tools for a trade, or equipment needed for employment.

(d) Hunting and fishing equipment necessary for securing food.

(e) One automobile for family transportation, or other equivalent and necessary transportation equipment. An additional automobile may be excluded if necessary for medical or employment purposes.

(6) Special Personal Property Rules: (a) Recreational equipment not essential for securing food shall be counted

as currently available resources. Such equipment includes but is not limited to boats, snowmobiles, motorcycles, motorbikes, and bikes, except as otherwise excluded under section (5) of this rule.

4. This new rule is actually a substantially redrafted version of former rule 46-2.10(14)-S11210, which is being repealed. The complete redrafting was necessary for purposes of clarity. The most significant change in the rule is that it removes all limits on value of residence for purposes of AFDC eligibility, to avoid forcing needy individuals out of their own homes. The Department determined that the value limitation should be removed because of the great inflation of real property values in recent years, which meant that persons owning even extremely modest homes were ineligible for assistance.

5. Interested parties may submit their data, views, arguments, or requests for an oral hearing concerning the proposed adoption and repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than June 22, 1978. A Public Hearing will be scheduled if requested by 10% or 25 of the persons directly affected by the rules.

6. The authority of the department to make the proposed rule is based on section 71-503, R.C.M. 1947.

Patricia E. Kelly
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1978.

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

In the matter of the adoption of a rule pertaining to AFDC assistance standards and the repeal of ARM Rule 46-2.10(14)-S11120	)))))))	NOTICE OF PROPOSED ADOPTION OF A RULE PERTAINING TO AFDC ASSISTANCE STANDARDS AND THE REPEAL OF ARM RULE 46-2.10(14)-S11120 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 24, 1978, the State Department of Social and Rehabilitation Services proposes to adopt a rule pertaining to AFDC assistance standards and repeal ARM Rule 46-2.10(14)-S11120.

2. The rules proposed to be repealed can be found on pages 46-66 through 46-69.1 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE I TABLE OF ASSISTANCE STANDARDS (1) The table of assistance standards contains the requirements of individuals or families according to the number of persons and the type of living arrangements.

(a) Basic Requirements:

	BUDGET TO BE USED WHEN NO *RENT IS PAID			
No. of Children	Family with one adult per month	Family with one adult per day	Family with two adults per month	Family with two adults per day
0	$ 93.00	$ 3.10	$162.00	$ 5.40
1	$116.00	$ 3.82	$178.00	$ 5.93
2	167.00	5.52	213.00	7.10
3	213.00	7.10	252.00	8.40
4	242.00	8.02	275.00	9.17
5	257.00	8.57	311.00	10.37
6	284.00	9.47	342.00	11.40
7	315.00	10.50	373.00	12.43
8	346.00	11.53	405.00	13.50
9	377.00	12.57	435.00	14.50
10	409.00	13.63	468.00	15.60
11	439.00	14.63	499.00	16.63
12	472.00	15.73	530.00	17.67
13	502.00	16.73	561.00	18.70
14	534.00	17.80	592.00	19.73
15	565.00	18.83	623.00	20.77
16	596.00	19.87	654.00	22.40

BUDGET TO BE USED WHEN *RENT IS PAID

No. of Children	Family with one adult per month	Family with one adult per day	Family with two adults per month	Family with two adults per day
0	$124.00	$ 4.19	$213.00	$ 7.10
1	$163.00	$ 5.43	$248.00	$ 8.22
2	222.00	7.40	284.00	9.47
3	284.00	9.46	336.00	11.20
4	323.00	10.76	352.00	11.73
5	342.00	11.40	394.00	13.13
6	373.00	12.43	436.00	14.53
7	404.00	13.46	478.00	15.93
8	435.00	14.50	520.00	17.33
9	466.00	15.53	562.00	18.73
10	497.00	16.56	604.00	20.13
11	528.00	17.60	646.00	21.53
12	559.00	18.63	688.00	22.93
13	590.00	19.66	730.00	24.33
14	621.00	20.70	772.00	25.73
15	652.00	21.73	814.00	27.13
16	683.00	22.76	856.00	28.53

*Rent cost includes house payments, rent, mortgage payments, home repairs, taxes, home insurance, and other costs related to maintaining a home.

The Per Day Column is to be used to compute General Assistance for the particular size family. Example - A family of four (two children and two adults) paying rent-15-day GA - 8.17 x 15 = $122.55 or ($123.00). The total is rounded off to the nearest dollar.

SPECIAL ALLOWANCE

Personal needs in a Nursing Home----$25.00
Children in Boarding School----------$16.00
Adult Foster Care----------$206.70
Children in Boarding School Home on Weekends----------$ 31.00

In stepfather cases, the needs of the children only are to be met in the assistance payment. The stepfather under Montana law has no responsibility to support his stepchildren, but does have the responsibility of supporting his wife (the children's mother). Any income of the natural mother has to be considered available to meet the needs of the children, less any expense in earning the income. The stepfather will have to be eligible in his own right by reason of incapacity to have his needs met in the assistance payment. The mother's need in these situations could be included under the needy caretaker relative provisions.

In Boarding School situations where children are in the boarding school on a full time or part time basis, the children are to be budgeted according to the special allowance table. In situations where all the children are in boarding school, the needy caretaker relative is to be budgeted on the basis of a single person paying rent.

(b) Basic Requirements:

BUDGET TO BE USED CHILDREN ONLY

No. of Children	Monthly Rate	Daily Rate
1	$ 42.00	$ 1.40
2	98.00	3.22
3	160.00	5.33
4	199.00	6.63
5	218.00	7.27
6	252.00	8.40
7	294.00	9.80
8	336.00	11.20
9	378.00	12.60
10	420.00	14.00
11	462.00	15.40
12	504.00	16.80
13	546.00	18.20
14	588.00	19.60
15	630.00	21.00
16	672.00	22.40

4. This rule replaces and simplifies an earlier rule by consolidating the former winter and summer budgets into a single budget. The rule also raises the assistance level in conformity with federal requirements, and conforms the rule to existing departmental practice, in terms of benefit levels.

5. Interested parties may submit their data, views, arguments, or requests for an oral hearing concerning the proposed adoption and repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than June 22, 1978. A Public Hearing will be scheduled if requested by 10% or 25 of the persons directly affected by the rules.

6. The authority of the department to make the proposed rule is based on section 71-503, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1978.

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

In the Matter of the repeal of ARM Rule 46-2.10(18)-S11440(1)(g))(vi)(ac) pertaining to Intermediate Care B	)	NOTICE OF PROPOSED REPEAL OF ARM RULE 46-2.10(18)-S11440(1)(g)(vi)(ac) PERTAINING TO INTERMEDIATE CARE B NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 24, 1978, the State Department of Social and Rehabilitation Services proposes to repeal ARM Rule 46-2.10(18)-S11440(1)(g)(vi)(ac) pertaining to Intermediate Care B.

2. The rule proposed to be repealed can be found on page 46-93 of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because in 1974 the federal government published rules pertaining to reimbursement for Long-Term Care services. Those rules referred to Intermediate Care B as a Medicaid benefit. However, when the final federal regulations were published in April, 1976, all references to Intermediate Care B were deleted. In the meantime, SRS had revised its rules to include Intermediate Care B as a Medicaid service, and thus to allow payment at three levels of care (Skilled Nursing, Intermediate A and Intermediate B) until July 1, 1976. On that date, payment was limited, in accordance with governing federal regulations, to two levels of care (Skilled Nursing and Intermediate Care). The ARM has not been revised to reflect this change, and this is the purpose of this repeal of this subsection.

4. Interested parties may submit their data, views, arguments, or requests for an oral hearing concerning the proposed repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than June 22, 1978. A Public Hearing will be scheduled if requested by 10% or 25 of the persons directly affected by the rule.

5. The authority of the department to make the proposed rule is based on section 71-1511 R.C.M. 1947.

Patricia E. Melby
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1978.

BEFORE THE SUPERINTENDENT OF PUBLIC
INSTRUCTION OF THE STATE OF MONTANA

In the matter of the adoption of rules on hearing procedures and appellate procedures for special education controversies.	) NOTICE OF PUBLIC HEARING) FOR ADOPTION OF RULES ON) HEARING PROCEDURES AND) APPELLATE PROCEDURES FOR) SPECIAL EDUCATION CONTRO-) VERSIES.

TO: All Interested Persons:

1. On June 14, 1978, at 10:00 A.M., a public hearing will be held in the Conference Room at 1300 Eleventh Avenue, Helena, Montana, to consider the adoption of three rules which provide due process hearing procedures and appellate procedures for special education controversies.

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

3. The proposed rules provide as follows:

48-2.18(42)-P18750 HEARING. (1) Scope. A parent or board of trustees may initiate a hearing:

(a) on a refusal of a parent to consent to a preplacement evaluation by the school district which is providing educational services to the child or by the school district in which the child's parent resides;

(b) on a controversy about the initial placement of a handicapped child in a program providing special education and related services;

(c) on a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a handicapped child;

(d) on a proposal or a refusal to initiate or change the provision of a free appropriate public education to a handicapped child; or

(e) on a written request for an extention of a temporary placement of a handicapped child.

(2) Requests for Hearing. A parent, the board of trustees of the district in which a child's parent resides, or the board of trustees providing educational services to the child may initiate a hearing by filing a written request for a hearing, together with a statement of the reasons therefor and the names and addresses of the parties, with the county superintendent of schools of the county in which lies the school district in which the handicapped child's parent resides.

(3) Notification of Access to Information and Assistance. (a) Upon receipt of a request for a hearing, the county superintendent shall notify the parent in writing:

(i) that the parent or his representative designated in writing shall have access to school reports, files and records pertaining to the child and shall be given copies at the actual cost of copying;

(ii) of any free or low-cost legal and other relevant services avialable in the area.

(b) Upon request, a parent shall be informed by the county superintendent and the school districts of any free or low-cost legal and other relevant services available in the area.

(4) Conference and Informal Disposition. Upon receipt of a request for a hearing, the county superintendent shall direct the appropriate special education personnel to schedule a conference with the parent within 5 days for the purpose of settling the controversy without hearing.

(5) Notice of Hearing. (a) If the parent cannot attend a conference within the 5 days or the controversy is not settled, the county sperintendent shall schedule a hearing at a time and place which is reasonably convenient to the parent and child. In no event shall the hearing take place later than 20 days after receipt of the request for the hearing.

(b) Written notice of the date, time and place shall be sent to all parties by certified mail. Notice to the parent shall be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language, the county superintendent shall direct the notice to be translated orally or by other means to the parent in his native language or other means of communication.

(6) Witnesses. At the request of the parent, the board of trustees of any district which is a party to the hearing shall require the attendance at the hearing of any officer or employee of the district who may have evidence or testimony relevant to the needs, abilities, proposed programs or status of the child.

(7) Evidence. Evidence which a party intends to introduce at the hearing must be disclosed to the other parties at least 5 days before the hearing.

(8) Conduct of Hearing. (a) At the hearing an impartial hearing officer shall hear witnesses and take evidence according to the provisions of this rule and according to the common law and statutory rules of evidence which are not in conflict with the provisions of this rule.

(i) Objections to offers of evidence may be made and the hearing officer will note them in the record.

(ii) To expedite the hearing, if the interests of the parties are not prejudiced, any part of the evidence may be received in written form.

(iii) The hearing officer may take notice of judicially congnizable facts. Parties shall be notified of materials noticed and be given an opportunity to contest materials noticed.

(iv) Where the original of documentary evidence is not readily available the best evidence rule is hereby modified to allow copies of excerpts.

(v) All testimony shall be given under oath or affirmation.

(b) Any party to a hearing has the right to:

(i) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(iv) Obtain a written or electronic verbatim record of the hearing;

(v) Obtain written findings of fact and decisions.

(c) The parent shall have the right to have the child who is the subject of the hearing present.

(d) The hearing shall be closed to the public unless the parent requests an open hearing.

(e) A written or electronic verbatim record of the hearing shall be made.

(f) When necessary, interpreters in the native language or other mode of communication of a parent shall be provided throughout the hearing at public expense.

(g) The burden of proof shall be upon the board of trustees proposing or refusing a course of action. In the case of a placement question, the personnel must demonstrate why placement is being recommended or denied and why less restrictive placement alternatives would not adequately and appropriately serve the child's educational needs.

(9) Not later than 45 days after the request for hearing is filed with the county superintendent, plus specific time extensions granted at the request of a party, the hearing officer shall:

(a) Reach a final decision in the hearing which is written in language understandable to the general public; and

(b) Insure that a copy of the findings of fact, conclusions of law, decision and notice of opportunity for administrative appeal is sent by certified mail to each party and the county superintendent. The parent shall receive a copy of the decision in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the hearing officer shall direct the decision to be translated orally to the parent in his native language or other means of communication.

(10) Placement. The child shall remain in his current educational placement until the hearing officer enters a decision following the hearing, except in an emergency situation when the health and safety of the child or other children would be endangered or when the child's presence

substantially disrupts the educational programs for other children as provided in Rule 48-2.18(14)-S18120(1)(c)(vi).

(11) Appeal to the Superintendent of Pulbic Instruction. (a) The decision of the hearing officer is final unless a party to the hearing appeals, to the Superintendent of Public Instruction;

(b) Within 15 days after the finding of facts, conclusions of law, decision, and notice of opportunity for administrative appeal, a party may appeal the decision of the hearing officer to the Superintendent of Pulbic Instruction by filing a notice of appeal with the county superintendent. The party appealing shall mail a copy of the notice of appeal to all other parties and the Superintendent of Public Instruction.

(c) The notice of appeal shall state:

(i) the name of the party appealing;

(ii) the name(s) and address(es) of the other parties to the hearing;

(iii) a copy of the findings of fact, conclusions of law and decision being appealed;

(iv) a brief statement of the reasons for the appeal; and

(v) the signature and address of the party appealing or representatives.

(d) Upon receipt of the notice of appeal, the county superintendent will cause the record to be compiled and forwarded to the Superintendent of Public Instruction. The record shall contain:

(i) a verbatim, typewritten record of the hearing;

(ii) all exhibits offered into evidence;

(iii) proposed findings of fact, conclusions of law, and decision;

(iv) findings of fact, conclusions of law, decision, and notice of opportunity for administrative appeal;

(v) notice of appeal; and

(vi) all other notices, motions, memoranda and orders.

(History: Sec. 75-7802, R.C.M. 1947; IMP Sec. 75-7802, R.C.M. 1947;)

48-2.18(42)-P18760. ADMINISTRATIVE APPEAL. (1) Scope. An impartial hearing officer shall conduct an impartial review of hearings on appeal from decisions in special education controversies heard pursuant to the provisions of Rule 48-2.18(42)-P18750.

(2) Impartial Review. The hearing officer conducting the review of the hearing shall:

(a) Examine the entire hearing record;

(b) Insure that the procedures at the hearing were consistent with the requirements of due process;

(c) seek additional evidence if necessary, and if by

hearing, the hearing shall be conducted in accordance with Rule 48-2.18(42)-P18750(6), (7) and (8), at a time and place which is reasonably convenient to the parent and child;

(d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the hearing officer;

(e) On completion of the review, make an independent decision written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so; and

(f) Not later than 30 days after the Superintendent of Public Instruction receives the notice of appeal, plus specific time extentions granted at the request of a party, a copy of the decision is sent by certified mail to each party and the county superintendent. If the native language or other mode of communication is not a written language, the hearing officer shall direct the notice to be translated orally or by other means to the parent in his native language or other means of communication.

(3) Court Action. The decision of the hearing officer is final unless a party seeks judicial review pursuant to section 82-4216, R.C.M. 1947 or brings a civil action pursuant to 20 U.S.C. 1415.

(4) Placement. The child shall remain in his current educational placement until the hearing officer enters a decision, except in an emergency situation when the health and safety of the child or other children would be endangered or when the child's presence substantially disrupts the educational programs for other children as provided in Rule 48-2.18(14)-S18120(1)(c)(vi). (History: Sec. 75-7802, R.C.M. 1947; IMP Sec. 75-7802, R.C.M. 1947;)

48-2.18(42)-P18770. IMPARTIAL HEARING OFFICER. (1) Lists. Each county superintendent and the superintendent of public instruction shall keep a list of persons who serve as hearing officers. The list must include a statement of qualifications of each person to hear and decide special education controversies.

(2) Selection for a Hearing. (a) Upon filing of the request for a hearing, the county superintendent shall mail to each party a list of 5 or more proposed hearing officers together with their qualifications.

(b) A party shall have 7 days to study the list, cross off any names objected to, number the remaining names in order of preference, and return the list to the county superintendent. Requests for more information about proposed hearing officers must be directed to the county superintendent. As few names as possible should be crossed off.

(c) If, despite all efforts to arrive at a mutual choice, the parties cannot agree upon a hearing officer, the county superintendent will make an appointment, but in no case will a heraing officer whose name was crossed out by any party be so appointed.

(3) Selection for Administrative Appeal. (a) Upon receiving a copy of the notice of appeal the Superintendent of Public Instruction shall mail to each party a list of 5 or more proposed hearing officers together with their qualification.

(b) A party shall have 7 days to study the lsit, cross off any names objected to, number the remaining names in order of preference, and return the list to the Superintendent of Public Instruction. Reqeusts for more information about proposed hearing officers must be directed to the Superintendent of Public Instruction. As few names as possible should be crossed off.

(c) If, despite all efforts to arrive at a mutual choice, the parties cannot agree upon a hearing officer, the Superintendent of Public Instruction will make an appointment, but in no case will a hearing officer whose name was crossed out by any party be so appointed.

(4) Notwithstanding the foregoing provisions, the parties can mutually select the hearing officer.

(5)(a) A hearing may not be conducted or reviewed by a person who is an employee of a school district or other public agency which is involved in the education or care of the child, or who has a personal or professional interest which would conflict with his or her objectivity in the conduct or review of the hearing.

(b) A person who otherwise qualifies to conduct or review a hearing under paragraph (a) of this sub-section is not an employee solely because he or she is paid by the school district or other public agency to serve as a hearing officer. (History: Sec. 75-7802, R.C.M. 1947; IMP Sec. 75-7802, R.C.M. 1947;)

4. The Office of Public Instruction is proposing these rules to provide better procedures for due process protection of handicapped children and their parents and to provide handicapped children, their parents and education agencies standard hearing and appellate procedures for resolving special education controversies.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing or by submitting their data, views or arguments in writing to the Superintendent of Public Instruction, Capitol Building Helena, Montana.

6. Richard E. Gillespie, 1721 Eleventh Avenue, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is baled on section 75-7802, R.C.M. 1947.

Georgia Ruth Rice
Superintendent of Public
Instruction

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules concerning the administration of the emergency and disaster fund.	)))))	NOTICE OF THE ADOPTION OF RULES ARM 2-2.2(6)-S220 through 2-2.2(6)-S240 PERTAINING TO THE ADMINISTRATION OF EMERGENCY AND DISASTER FUND.

TO: All interested persons

1. On March 24, 1978, the Department of Administration published notice of the proposed adoption of rules concerning Emergency and Disaster Fund at pages 280-285 of the Montana Administrative Register, issue number 3.

2. The agency has adopted the rules as proposed.

3. No comments or testimony were received. The agency has adopted the rules because said rules determining financial capability are not in effect at the present time.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State May 8th, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the Repeal of Rules Relating to Regulation of Purchasing Activities	) NOTICE OF REPEAL OF RULES 2-2.6(6)-S640 THROUGH 2-2.6(6)-S6030 PERTAINING TO PURCHASING ACTIVITIES

TO ALL INTERESTED PERSONS:

1. On March 24, 1978 the Department of Administration published notice of a proposed repeal of rules concerning the regulation of purchasing activities at page 273 of the 1978 Montana Administrative Register, issue number 3.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received. The agency has repealed the rules in order to allow for the adoption of substitute rules relating to the same subject matter.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the Adoption of Rules Relating to Regulation of Purchasing Activities	) NOTICE OF ADOPTION OF RULES 2-2.16(1)-S1600 THROUGH 2-2.16(1)-S16040 PERTAINING TO PURCHASING ACTIVITIES

TO ALL INTERESTED PERSONS:

1. On March 24, 1978 the Department of Administration published notice of a proposed adoption of rules concerning the regulation of purchasing activities at page 274 and 275 of the 1978 Montana Administrative Register, issue number 3.

2. The agency has adopted the rules as proposed.

3. No comments or testimony were received. The agency has adopted the rules replacing those rules previously adopted and repealed by the Department of Administration of the same subject matter.

Dated this 8th day of May, 1978.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, May 8, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules concerning Holiday Pay for State employees	)))	NOTICE OF ADOPTION OF RULES ARM 2-2.14(32)-S14550 THROUGH 2-2.14(32)-S14580 PERTAINING TO HOLIDAY PAY

TO: All Interested Persons

1. On March 24, 1978, the Department of Administration published notice of the proposed adoption of rules concerning holiday pay for State employees at pages 276-279 of the Montana Administrative Register, issue number 3.

2. The agency has adopted the rule as proposed, and will number the Rule ARM 2-2.14(32)-S14550 through 2-2.14(32)-S14580.

3. Comments were made by the staff of the Administrative Code Committee objecting to ARM 2-2.14(32)-S14570(f), which provides double time and one-half to an employee who works on a holiday and is not given any subsequent time off. The Administrative Code Committee felt that, according to the statutes, only overtime over forty hours should be paid at premium rates. However, Personnel Division staff explained that the law contains minimum provisions and this would not prevent the State from setting a rate that would be consistent with rates received by employees under a collective bargaining agreement.

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State May 12, 1978.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the Matter of the Department of Agriculture Adopting NEW rules for the Department of Agriculture.) RULE SECTION

TO: All Interest Persons

1. Adoption of NEW Rule 4.18.000 REPORTS. Department of Agriculture published Notice 4-2-49 of a proposed new rule on March 25, 1978 at page 286 , Montana Administrative Register; 1978 issue number 3.

2. Statement of reasons in support of the adoption is that the laws of Montana require this department to adopt rules establishing guidelines as directed in House Bill 234 of the Forty-Fifth Legislative Session.

No Testimony or comments were received.

3. This rule has been adopted as proposed with no language changes and becomes effective on May 26, 1978.

1. Adoption of NEW Rule 4.14.3160 GRAIN STANDARDS. Department of Agriculture published Notice 4-2-50 of a proposed rule on March 25, 1978 at page 288 , Montana Administrative Register; 1978 issue number 3.

2. Statement of reasons in support of the adoption is that the laws of Montana require this department to adopt rules for grain standards and these rules must not conflict with the United States Grain Standards Act.

No testimony or comments were received.

3. This rule has been adopted as proposed with no language changes and becomes effective on May 26, 1978.

1. Adoption of NEW rules 4.30.200 through 4.30.2050 for the Hail Board. Department of Agriculture published Notice 4-2-51 of a proposed set of new rules for the Hail Board on March 25, 1978 at pages 290 thru 293 , Montana Administrative Register; 1978 issue number 3.

2.Statement of reasons in support of the adoption is that the Hail Board has many regulations that have never been put into force and the need to do so was now.

No testimony or comments were received.

3. These rules have been adopted as proposed with no language changes and becomes effective on May 26, 1978.

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 23-3.14(10)-S14040	)))	NOTICE OF THE AMENDMENT OF RULE 23-3.14(10)-S14040

TO: All Interested Persons:

1. On March 23, 1978 the Board of Crime Control published notice of a proposed amendment to rule 23-3.14(10)-S14040 concerning requirements for peace officer certification at page 321 of the 1978 Montana Administrative Register, issue number 3.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because it sets forth the requirements for certification of peace officers with prior out-of-state experience and training and are being employed by Montana law enforcement agencies. In addition, the new rule permits certain qualified peace officers to take an equivalency test in lieu of completing the Intermediate and Advance Courses so they can be awarded the Intermediate and Advance Certificates. This will allow certain officers who have completed equivalent training but do not, for various reasons, have the opportunity to complete these courses at MLEA to have a method by which they can receive these certificates. Finally, the new rule increases the training requirements of holders of college degrees for eligibility for award of the Intermediate and Advance Certificates. The old rule did not contain any requirements for advanced training for these officers but did for peace officers who had no college degrees. Law enforcement administrators throughout this state had felt this was an oversight and have urged the Board of Crime Control to correct this.

Administrator

Certified to the Secretary of State May 9, 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 AMENDMENT OF RULES) FOR CUSTOMER DEPOSIT FOR) GUARANTEE OF PAYMENT AND) NOTICE OF PROPOSED REPEAL OF) RULE 38-2.14(2)-S1480)

TO: All Interested Persons

1. On February 24, 1978, the Department of Public Service Regulation published notice of proposed amendments to 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 concerning customer deposit for guarantee of payment at page 169-172 of the 1978 Montana Administrative Register, issue number 2.

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

Sub-Chapter 2

Customer Deposit for Guarantee of Payment

38-2.14(2)-S1430 ESTABLISHMENT OF CREDIT--RESIDENTIAL
(1), (a), (b), (c), (d), (e) No change.
(f) In the case of telephone utilities, the guarantee amount SHALL BE FOR THE TOTAL AMOUNT OF THE BILL.

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

38-2.14(2)-S1450 DEPOSIT REQUIREMENTS No change.

38-2.14(2)-S1460 PROHIBITED STANDARDS FOR REQUIRING CASH DEPOSIT OR OTHER GUARANTEE FOR RESIDENTIAL SERVICE
No change.

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-sixth of estimated annual billings~~.~~; PROVIDED THAT DEPOSIT OF NOT MORE THAN TWENTY-FIVE PERCENT (25%) OF THE ESTIMATE MAY BE REQUIRED OF APPLICANTS FOR NON-RESIDENTIAL SERVICE.
(2) No change.

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

38-2.14(2)-S1490 TRANSFER OF DEPOSIT No change.

38-2.14(2)-S14100 INTEREST ON DEPOSITS No change.

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

38-2.14(2)-S14120 RECORD OF DEPOSITS No change.

38-2.14(2)-S14130 UNIFORM APPLICATION No change.

38-2.14(2)-S14140 GUARANTEE IN LIEU OF DEPOSIT No change.

38-2.14(2)-S14150 GUARANTEE TERMS; CONDITIONS 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 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 during that initial period when customer payment is uncertain.

4. Following initial publication in the Register, the Commission received written comments from The Montana Power Company and Mountain Bell proposing additional amendments. Montana Power asked that the maximum deposit that could be required from new non-residential customers be increased. Because these customers present a greater risk of default to a utility, it is felt that more of a deposit is required. Mountain Bell argued that telephone utilities should be allowed to insist that a guarantee arrangement, when substituted for a deposit, should extend to the full amount of the guarantee's bill. Because telephone bills, unlike those of other utilities, can rapidly run into hundreds of dollars, this special treatment is said to be justified.

The Commission agrees that these amendments are justified by the circumstances they address, and accordingly, has accepted the proposed amendments in Sec's. 38-2.14(2)-S1430(f) and 38-2.14(2)-S1470(1).

GORDON E. BOLLINGER, Chairman

Certified to the Secretary of State May 15, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF HEARING AID DISPENSERS

Adoption of Rule ARM 40-3.42(6)-S4285 EXAMINATIONS - PASS/FAIL POINT

1. The Board of Hearing Aid Dispensers published Notice No. 40-3-42-8 of a proposed amendment to ARM 40-3.42(6)-S4230 and adoption of rules relating to re-examination and setting a pass/fail point on March 24, 1978 at page 326 MAR 1978, Issue No. 3.

2. This adoption points out that the notice provided for both an amendment and an adoption. The proposed amendment has been withdrawn and is not adopted on advice of the Montana Administrative Code Committee.

In the proposed new rule, the Board is postponing the adoption of sub-section 1 thereof until it has further opportunity to meet and consider the recommendation of the Code Committee, which objected to the sufficiency of the reason stated and which asked that the sub-section be re-noticed with more adequate explanation.

Sub-section 2 of the proposed new rule is adopted herewith and establishes a pass/fail point for the written examination and requires that both the written and oral must be passed with pass/fail on the oral to be determined by majority vote of the Board. The text of that rule along with the rational is stated in the notice.

The Administrative Code Committee further recommended that the Board's existing rule on traineeship, ARM 40-3.42(6)-S4230, which was the subject of the withdrawn amendment, be repealed. The Board will further study this recommendation and would point out that in any event, such repeal could not be accomplished at this time in that it was not noticed and would require further publication of notice or repeal.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF HORSE RACING

NEW EMERGENCY RULE

The Board of Horse Racing finds that the new emergency rule stated below is in the best interest of the horse racing public and the reason for the rule is stated below in the preamble to the rule.

The Board further finds that this emergency adoption is imperative and is necessary to prevent imminent injustice and peril to the horse racing public welfare. In particular, the Board would point out that to adopt this rule through the regular rule making process would require a minimum of a 60 day time period. If the Board used this procedure, the rule would become effective in approximately the middle of the horse racing season and would apply only to the race meets held after that date. As numerous meet dates are now commencing and will have occurred prior to such future effective date, the Board feels that unless this rule is made immediately effective those licensees conducting meets after said future effective date would be discriminated against. The Board further feels this rule must be made immediately effective so that all licensees conducting race meets will be equally subject to the rule.

This rule is effective and must be complied with on or after May 5, 1978. The rule as an emergency measure will continue in effect for a maximum of 120 days or until such time prior to that date the Board makes it effective through the regular rule adoption process. The Board will follow the regular rule adoption process in the interim and will publish notice of proposed adoption on May 25, 1978, which will either further schedule a hearing or offer the opportunity to the public to demand a hearing.

I. MAIDEN RACES - MONTANA BREDS PREFERRED (1) For the purposes of further encouraging the breeding within the state of valuable purebred registered horses and to increase the market value and saleability of said horses, every maiden race written at Montana pari-mutuel race tracks shall be written with Montana bred maidens preferred. (Hist. Sec. 62-505 R.C.M. 1947; IMP Sec. 62-505, 509 R.C.M. 1947; EMERG NEW, Eff. 5/5/78)

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF OPTOMETRISTS

Amendment of Rule 40-3.70(6)-S7070 EXAMINATIONS

1. The Board of Optometrists published Notice No. 40-3-70-4 of a proposed amendment of 40-3.70(6)-S7070 on February 24, 1978 at page 177 MAR 1978, Issue No. 2.

2. The amendment deletes existing subsection (3)(a) and (3)(c) in their entirety and replaces them with certain language concerning the Board examination, the full text of which is stated in the notice.

The reason for the 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 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.

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

4. The amendment of the rule has been made exactly as proposed.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of rule 42-2.8(1)-S8305 (rule "1")	)))	NOTICE OF ADOPTION OF THE EXEMPTION FOR HANDICAPPED CHILD

TO: All Interested Persons

1. On March 24, 1978, the Department of Revenue published notice of a proposed adoption of a rule concerning exemption for handicapped child on page 330 of the 1978 Montana Administrative Register, Issue No. 3.

2. The agency has adopted rule 42-2.8(1)-S8305 as proposed.

3. No comments or testimony were received. The agency has adopted the rule as proposed because the regulation implements new legislation and adds essential information with respect to Chapter 500, Laws 1977.

The adoption of this rule is to become effective on May 26, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of rule 42-2.8(1)-S8307 (rule "1")	)))	NOTICE OF ADOPTION FOR DEDUCTION ALLOWED FOR EXPENSES TO ENABLE AN INDIVIDUAL TO BE GAINFULLY EMPLOYED.

TO: All Interested Persons

1. On March 24, 1978, the Department of Revenue published notice of a proposed adoption of a rule concerning deduction allowed for expenses to enable an individual to be gainfully employed on pages 332-333 of the 1978 Montana Administrative Register, Issue No. 3.

2. The agency has adopted rule 42-2.8(1)-S8307 as proposed.

3. No comments or testimony were received. The agency has adopted the rule as proposed because the regulation implements new legislation and adds essential information with respect to Chapter 102, Laws 1977.

The adoption of this rule is to become effective on May 26, 1978.

BEFORE THE DEPARTENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of rule 42-2.8(1)-S80540 (rule "1")	)))	NOTICE OF ADOPTION OF INVESTMENT CREDIT

TO: All Interested Persons

1. On March 24, 1978, the Department of Revenue published notice of a proposed adoption of investment credit on page 331 of the 1978 Montana Administrative Register, Issue No. 3.

2. The agency has adopted rule 42-2.8(1)-S80540 as proposed.

3. No comments or testimony were received. The agency has adopted the rule as proposed because the regulation implements new legislation and adds essential information with respect to Chapter 412, Laws 1977.

The adoption of this rule is to become effective on May 26, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of rule 42-2.12(6)-S12110 (rule "1")	)))	NOTICE OF ADOPTION OF THE THE INTER-QUOTA AREA TRANSFERS

TO: All Interested Persons

1. On March 24, 1978, the Department of Revenue published notice of a proposed adoption of the inter-quota area transfers on pages 334-335 of the 1978 Montana Administrative Register, Issue No. 3.

2. The agency has adopted rule 42-2.12(6)-S12110 with the following changes:

Sub-paragraph (3) is deleted and the reason is repetitive statutory language.

Sub-paragraph (4) now becomes (3) as we deleted sub-paragraph (3) because of the repetitive statutory language. The first two sentences of the now sub-paragraph (3) are deleted because of the repetitiveness in statutory language. The last sentence in the now sub-paragraph (3) is revised as follows: The lapse of a license under this regulation will ~~not make a new license available in the quota area.~~ reduce the percentage for inter-quota transfers.

Sub-paragraph (5) now becomes (4) because of the deletion of the proposed sub-paragraph (3). In (b) under sub-paragraph (5) the first sentence is revised as follows:

If the quota for an area is 18 licenses and ~~20~~ 32 licenses have been issued the quota area is 177.8% of the quota.

3. The Montana Tavern Association appeared but changes were made in rule so that statutory language would not be repeated and for clarification. The agency has adopted this rule as proposed with the above changes because the new regulation clarifies the circumstances when an inter-quota transfer can be made pursuant to Section 4-4-206, R.C.M. 1947.

The adoption of this rule is to become effective on May 26, 1978.

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

In the matter of the amendment of rule ARM 44-3.10(6)-S1086, defining "ballot issue" for purposes of the Campaign Practices Act and prescribing reporting requirements for issue committees	NOTICE OF EMERGENCY AMENDMENT of ARM 44-3.10(6)-S1086, regarding ballot issues and organizations supporting or opposing them.

TO: All interested persons

1. On April 6, 1978, the Commissioner filed with the Secretary of State a notice of public hearing (on abbreviated notice) to consider the emergency amendment of ARM 44-3.10(6)-S1086. The hearing was held on April 14, 1978.

2. The rationale for the proposed amendment and the statement of reasons for the emergency procedure are set forth more fully in MAR Notice No. 44-3-10-9, published in the April issue of the Montana Administrative Register. Briefly: the prior version of the rule is capable of an interpretation which would eliminate the need for an organization to report any and all contributions and expenditures made or received prior to the certification of an issue. Although the Commissioner has no particular reason to believe that existing organizations plan anything other than full and accurate reporting, it is best to clarify the rule before full-scale campaigning gets under way. The time frame of the deadlines for certification and the November general election make the normal hearing process impossible, and without the amendment the public's right to information regarding the sources of campaign funding could be imperiled if not abrogated entirely.

3. Effective as of the date of filing of this notice with the Montana Secretary of State (April 17, 1978) the following emergency amendment is adopted. The language differs slightly from that published in MAR Notice No. 44-3-10-9, in that the ambiguity surrounding the question of whether or not all contributions must ultimately be reported is eliminated--in the event of certification, all contributions are reportable, whereas expenses of printing and circulating petitions may be ignored for purposes of the Campaign Practices Act. New material is underlined, stricken material is interlined:

44-3.10(6)-S1086 BALLOT ISSUE - DEFINITION: PERSONS SUP--PORTING OR OPPOSING (1) An issue as defined in section 23-4777(3), R.C.M. 1947, becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed.

(2) ~~Committees which have cash on hand at the time of certification (which they wish to use in an election) shall disclose on their first report the source(s) of these funds,~~

~~including the information required by section 23-4779 and these rules. The cash balances are assumed to be composed of these contributions most recently received by the committee.~~ Contributions received, and expenditures made (except for expenses of printing and circulating petitions) prior to certification are contributions and expenditures as defined in sections 23-4777(5) and (6), and must be reported on a committee's initial report in the event that certification occurs.

(3) An organization which has received contributions or made such expenditures shall file a statement of organization within five days of the issue's certification.

4. At the public hearing, Ms. Janelle Fallan, representing the Montana Chamber of Commerce, opposed adoption of the amendment on the following grounds: (1) that adoption of the amendment is not within the Commissioner's authority; (2) that application of the rule raises questions with respect to corporate contributions, and the amendment should therefore be delayed pending a resolution of that issue in the courts.

The arguments of the Chamber of Commerce, while persuasive, are overbalanced by these considerations: (1) Corporate contributions to issue campaigns are not unlawful, see *C&C Plywood Corporation v. Hanson*, 420 F. Supp. 1254 (D. Mont. 1976), *appeal pending*, no. 76-3118 (9th Cir. 1977). (2) The probability that they might become unlawful during the conduct of 1978 campaigns, through reversal of *C&C Plywood*, is exceedingly remote. (3) Even in that unlikely eventuality, such a decision could not be applied retroactively to transactions having taken place in the interim. Therefore, the only substantive effect of the amendment upon the question of corporate contributions is that such contributions would ultimately be disclosed on an issue committee's periodic reports. This hardly offends the spirit of the Campaign Practices Act. The rule is within the scope of the Commissioner's authority, see §23-4786(14).

Comments received in support of the amendment are too numerous to detail here but are available for inspection at the office of the Commissioner. Although it has been suggested that the rule should require immediate registration and reporting of all contributions/expenditures by all organizations circulating petitions, the Commissioner feels that such a rule would impose an undue burden on those whose issues are never ultimately certified.

John N. Hanson
Commissioner of Campaign
Finances and Practices

Certified to the Secretary of State April 17, 1978.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules outlining Board of Public Education policies and Office of Public Instruction administrative procedures for vocational education in Montana) NOTICE OF THE ADOPTION OF RULES

TO: All Interested Persons:

1. On March 25, 1978, the Board of Public Education and the Office of Public Instruction published notice of a proposed adoption of rules concerning Board of Public Education policies and Office of Public Instruction administrative procedures for vocational education in Montana at page 375 of the 1978 Montana Administrative Register, issue number 3.

2. The agency has adopted the rules as proposed.

3. No comments or testimony were received. The agencies have adopted the rules to provide policies and procedures for the governance and administration of vocational education in Montana's public schools.

4. The rules as adopted read as follows:

Sub-Chapter 1

General Information

48-2.26(1)-S2600 DEFINITIONS.

(1) Adult program - Vocational education for persons 16 years of age or older who have completed or left high school and who are not described in the definition of "postsecondary program," or who have already entered the labor market, or who are unemployed.

(2) American Indian or Native Alaskan - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(3) Ancillary services - Activities which contribute to the enhancement of quality in vocational education programs, including activities such as teacher training and curriculum development, but excluding administration (except in consumer and homemaking education under Section 150 of the Act).

(4) Application fee - A fee collected only one time from each applying student. The student application fee is considered as part of the Board of Public Education fee.

(5) Apprentice course - A course devoted to teaching vocational and related information to individuals pursuing a formal apprentice training program and registered with a recognized state or federal apprenticeship agency.

(6) Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or Pacific Islands. This area includes, for

example, China, Japan, Korea, the Philippine Islands, Samoa, India and Vietnam.

(7) Black, not of Hispanic origin - A person having origins in any of the black racial groups of Africa.

(8) Board of Public Education - The sole agency to disburse federal and state vocational funds and to plan, coordinate, govern, and provide leadership for the total state vocational education system under the governing jurisdiction of the Board of Public Education.

(9) Board of Public Education fee - A fee established by the Board of Public Education for postsecondary vocational technical center students.

(10) Capital expenditure - Includes major equipment, minor equipment and construction both major and minor to buildings or grounds.

(11) Consumer and homemaking education programs - Instructional programs, services, and activities at all educational levels for the occupations of homemaking including, but not limited to:

(a) consumer education
(b) food and nutrition
(c) family living and parenthood education
(d) child development and guidance
(e) housing and home management (including resource management) and
(f) clothing and textiles.

(12) Cooperative education - A program of vocational education for persons who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field, but these two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and to his or her employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

(13) Cooperative program seminar - A minimum of one hour per week, in addition to regular classes, devoted to discussion of working problems, assignments of special projects, etc.

(14) Curriculum - A series of courses or units, organized in sequential order, designed to lead the student toward the attainment of vocational aims and objectives.

(15) Director - An administrator who has administrative responsibilities for vocational programs.

(16) Disadvantaged -

(a) Persons (other than handicapped persons) who:

(i) have academic or economic disadvantages and

(ii) require special services, assistance, or programs in order to enable them to succeed in vocational education programs.

(b) "Academic disadvantage" for the purposes of this definition of "disadvantaged" means that a person

(i) lacks reading and writing skills,
(ii) lacks mathematical skills, or
(iii) performs below grade level.
(c) "Economic disadvantage," for the purposes of this definition of "disadvantaged," means
(i) family income is at or below national poverty level;
(ii) participant or parent(s) or guardian of the participant is unemployed;
(iii) participant or parent of the participant is recipient of public assistance; or
(iv) participant is institutionalized or under state guardianship.
(17) Energy education program - A program for the training of miners, supervisors, technicians (particularly safety personnel) and environmentalists in the field of coal mining and coal mining technology. Programs may be conducted at the post-secondary institutions only. Programs may also include training of individuals needed for the installation of solar energy equipment, including training necessary for the installation of glass paneled solar collectors and of wind energy generators, and for the installation of other related applications of solar energy.
(18) Evaluation - A term indicating the procedure for determining the effectiveness of the program.
(19) Executive Officer of Vocational Education - The legally designated state official directly responsible to the Board of Public Education for the state administration of the policies of vocational education.
(20) Exemplary program - A program designed to enable educational agencies to explore, develop and demonstrate new and innovative ways to plan, implement and conduct vocational education programs, including
(a) programs designed to develop high quality vocational education programs for urban centers with high concentrations of economically disadvantaged individuals, unskilled workers, and unemployed individuals,
(b) programs designed to develop training opportunities for persons in sparsely populated rural areas and for individuals migrating from farms to urban areas,
(c) programs of effective vocational education for individuals with limited English-speaking ability,
(d) establishment of cooperative arrangements between public education and manpower agencies, designed to correlate vocational education opportunities with current and projected needs of the labor market, and
(e) programs designed to broaden occupational aspirations and opportunities for youth, with special emphasis given to youth who have academic, socioeconomic, or other handicaps, including
(i) programs and projects designed to familiarize secondary school students with the broad range of occupations for

which special skills are required, and the requisities for careers in such occupations and

(ii) programs and projects to facilitate the participation of employers and labor organizations in postsecondary vocational education. Priority will be given to programs designed to reduce sex stereotyping in vocational education.

(21) Full-time equivalent (postsecondary) -

(a) student - twenty-five (25) classroom contact hours per week.

(b) administrator - twelve (12) months of contracted employment.

(c) instructional staff - twenty-five (25) hours of actual student classroom contact hours per week.

(d) other professional - thirty-five (35) hours per week for a 180-190 day contracted period.

(e) support staff - forty (40) hours per week for a twelve (12) month period.

(f) productivity formula by FTE:

$$FTE = \frac{\text{number of hours x instructional classroom hours per week}}{375}$$

The national average size of postsecondary vocational education courses is approximately 14.8; the average of 15 students was used. The 375 factor is derived by multiplying the average class size (15) times the average instructional staff hours in front of a class (25). 25 x 25 = 375.

The above formula applies to all instructors unless it violates pre-established standards required by state or national accrediting agencies.

(22) Full-time vocational education teacher - An instructor carrying a vocational teaching assignment that contains at least the minimum number of hours considered by the State Board or local educational agency to be the recognized full-time load of a person engaged for a normal work day and week in the program.

(23) Guidance and counseling programs - Includes counseling, information, placement, appraisal, and follow-up and research.

(24) Handicapped

(a) a person who is:

(i) mentally retarded,

(ii) hard of hearing,

(iii) deaf,

(iv) speech impaired,

(v) visually handicapped,

(vi) seriously emotionally disturbed,

(vii) crippled (orthopedically impaired), or

(viii) other health impaired person, including a person who suffers from learning disabilities to the extent the disability is a health impairment, and

(b) a person who, by reason of the above:
(i) requires special education and related services, and
(ii) cannot succeed in the regular vocational education program without special education assistance, or
(iii) requires a modified vocational education program.

(25) Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(26) Industrial arts education program - Those education programs:

(a) which pertain to the body of related subject matter, or related courses, organized for the development of understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designing, constructing, evaluating and using tools, machines, materials and processes and

(b) which assist individuals in making informed and meaningful occupational choices or which prepare them for entry into advanced trade and industrial or technical education programs.

(27) Instructional staff - Individuals employed for the primary purpose of performing instructional activities in job skill preparation. Only those individuals who devote 50% or more of their time to instruction in specific job skills instruction or training should be reported. Both part-time and full-time staff members should be reported.

(28) Left before completion - A student who had been enrolled in a program of vocational education and left the school and program voluntarily before its formal completion because he/she acquired sufficient entry-level job skills to work in the field, and who took a job related to that training or left for personal reasons.

(29) Limited English speaking -

(a) Individuals who were not born in the United States or whose native language is a language other than English and

(b) Individuals who come from environments where a language other than English is dominant, as further defined by the Commissioner under regulations authority by the Bilingual Education Act, Title VII, Elementary and Secondary Education Act of 1965, as amended and by reasons thereof, have difficulty speaking and understanding instruction in the English language.

(30) Local advisory committee - A group of persons, usually outside the education profession, selected for the purpose of offering advice and counsel regarding vocational education to the educational institution.

(31) Major equipment - Fixed or movable articles, particularly designed and essential for use in a vocation, or training for a vocation, which cost $300 or more per unit. (Not applicable to construction projects.)

(32) Major occupational heading -
(a) agriculture

(b) distributive
(c) health
(d) home economics occupational preparation
(e) office
(f) technical
(g) trade and industry

Under these occupational headings there are many specific occupational or vocational fields of training.

(33) Manpower training - Specialized federal training programs designed to lower the state or local unemployment level or to increase the number of employable persons through training programs.

(34) Minor equipment - Those fixed or movable articles particularly designed for and essential to the performance of work in a vocation, or training for a vocation, which cost less than $300 per unit. (Not applicable to construction costs.)

(35) Montana Advisory Council for Vocational Education - A council appointed by the Governor which is separate and independent from the Board of Public Education. The advisory council shall advise the Board on development of the State Plan, long-range planning, and on policy matters arising from administration of the State Plan, and evaluate vocational education program offerings and submit an annual evaluation report.

(36) Occupational skills - Refers to instruction directly preparing persons for employment in a specific occupation or a cluster of closely-related occupations in an occupational field.

(37) Occupational title - The common name by which a position is identified. The generally accepted source of nomenclature is the Dictionary of Occupational Titles, published by the Department of Labor.

(38) Open-entry/exit program - A program which allows students to enter at any time as the specific program allows, and to exit upon achieving acceptable competency.

(39) Part-time vocational education teacher - An instructor carrying a vocational teaching assignment that contains less than the minimum number of hours considered by the State Board or local educational agency to be the recognized full-time load of a person engaged for a normal work day and week in that program.

(40) Postsecondary educational institution - A nonprofit institution legally authorized to provide postsecondary education within a state for persons sixteen years or older, who have graduated from or left elementary or secondary.

(41) Postsecondary program - Vocational education for persons who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward a vocational certificate or associate or other degree, but which programs are not designed as baccalaureate or higher degree programs.

(42) Preparatory instruction - Vocational education instruction for persons who are available for study in preparation for

entering the labor market. Classes must be part of an approved program and all students receiving vocational instruction in preparatory classes under the State Plan must have a vocational objective which is a matter of record. Classes may be conducted in the day or evening, but in all cases must be part of a total program of study intended to prepare the student to enter the labor market in the vocation for which the instruction is given.

(43) Program assignment - Persons classified as instructional staff are assigned to program areas of instruction. Assignments should be unduplicated and only counted once. Dual or multiple assignment should be recorded in the program where the most clock hours of instruction occur. This definition relates to staff accounting and not budgeting.

(44) Program charges - A student charge deemed necessary by an institution for nonconsumable items or equipment required in a specific program of instruction. The sole purpose for collecting such charges is for institutional control of items or equipment needed by students in the program. Students shall assume ownership of the items or equipment after program completion or when the student leaves the program.

(45) Program completer - A student who has completed a planned sequence of courses, services, or activities designed to meet an occupational objective.

(46) Program options - Concentrated training in a specific occupational skill which is part of an approved vocational program. The concentrated training options shall be designated on the student's program completion certificate.

(47) Project VIEW (Vital Information for Education and Work)- A career guidance system which contains microfilmed information on education and work.

(48) Remedial - Planned diagnostic and/or helpful systematic activities for individuals currently enrolled who have deficits in basic skills area.

(49) Secondary program - Vocational education for persons in high school (span of grades usually beginning with grade 9 and ending with grade 12).

(50) Short-term preparatory - Classes organized to present short, intensive instruction in the skills or knowledge essential to employment at the entry level in a specific vocation.

(51) Special needs - Applies to persons who meet the requirements under the law for one of the three categories--handicapped, disadvantaged, and limited English-speaking--who require special programs, modification of programs, or supplemental services to help them succeed in a vocational education program.

(52) State Board - The State Board (Board of Public Education) designated or created by state law as the sole state agency responsible for:

(a) the administration of vocational education or

(b) supervision of the administration of vocational education in the state.

(53) State Educational Agency (SEA) -

(a) The State Board of Education; or

(b) other agency or office primarily responsible for the state supervision of public elementary and secondary schools, Office of Public Instruction; or

(c) if there is no such office or agency, an office or agency designated by the Governor or by state law.

(54) State student organization advisor - The state program consultant who provides statewide leadership to the appropriate vocational student organization as a part of the responsibility of the position.

(55) State Plan - An agreement between the Board of Public Education and the U. S. Office of Education describing:

(a) the vocational education program developed by the state to meet its own purposes and conditions, and

(b) the conditions under which the state will use federal vocational education funds (such conditions must conform to the federal acts and the official policies of the U. S. Office of Education before programs may be reimbursed from federal funds).

(56) State program consultant - A recognized expert in a specialized field or vocation whose advice is sought in the improvement of vocational education programming and program development.

(57) Student contact hour - An hour in which a student has contact with an instructor. For example, the number of students in the course, multiplied by the number of weeks in the quarter, multipled by the number of hours per week in class equals the total number of student contact hours generated by a particular course for the quarter. Or, # students x # weeks x # hours per week = # contact hours generated. This definition would include cooperative work experience, practicums, etc.

(58) Supervisor - A person who has supervisory responsibilities for vocational programs.

(59) Supplemental courses - Courses designed to extend or upgrade the skills and knowledge of persons already employed in the vocation (or related vocation) for which the instruction is given.

(60) Support staff - Individuals employed for maintenance, secretarial, or similar support duties.

(61) Syllabus - A summary or outline kept on file at the school which outlines the main points of a course of study for each vocational course offered.

(62) Transient student - A student who enters and then exits a program without completion in less than ten consecutive class days.

(63) Tuition - Payment for instruction for nonresidents with the amount determined by the Board of Public Education.

(64) Unduplicated count - The process of reporting an individual student only once, regardless of the number of programs in which he or she is enrolled during the year. Students who were enrolled in more than one program during the year, or who transferred from one program to another, should be reported only

once. Assign that student to the program closest to the student's occupational objective. If the student has two or more occupational objectives, then assign to the one program with the greatest number of hours of instruction.

(65) Vocational counselor - A vocationally and professionally trained person assisting individuals to understand their capabilities and interests, to choose a suitable vocation, and to prepare for employment and to make successful progress in employment. Five principle functions are: placement, follow-up, information, testing, and counseling.

(66) Vocational education - Organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree; for purposes of this paragraph, the term "organized education program" means only:

(a) instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training and

(b) the acquisition, maintenance, and repair of instructional supplies, teaching aids, and equipment.

The term "vocational education" does not mean the construction, acquisition, or initial equipment of buildings, or the acquisition or rental of land.

(67) Vocational education administrative implementation procedures - A series of procedures established by the Executive Officer of Vocational Education to bring into focus and to carry out the policies of the Board.

(68) Vocational education courses - An organization of vocational education subject matter and related learning experiences providing for the instruction of students on a regular or systematic basis.

(69) Vocational education funds - All federal and state funds disbursed by the Board of Public Education for vocational education in Montana, and local funds used for matching and maintenance of effort purposes as provided by law.

(70) Vocational education personnel - All state and local personnel whose part- or full-time salary is paid from funds appropriated for vocational education.

(71) Vocational education programs - A planned sequence of courses leading to the development of skills and knowledge required for entry into a specific vocation and developed and conducted in consultation with potential employers and others having skills in and substantive knowledge of the vocation. A program combines and coordinates related instruction of field, shop, laboratory, cooperative work, or other vocational experience which is of sufficient duration to develop competencies for employment. Consumer Homemaking programs as established in the Montana State Plan for Vocational Education shall also be included under this definition.

(72) Vocational instruction - Instruction which is designed to prepare individuals for employment in a specific occupation or

cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations. Such instruction may include:

(a) classroom instruction;

(b) classroom related field, shop, and laboratory work;

(c) programs providing occupational work experiences, including cooperative education and related instructional aspects of apprenticeship programs;

(d) remedial programs which are designed to enable individuals to profit from instruction related to the occupation or occupations for which they are being trained by correcting whatever educational deficiencies or handicaps prevent them from benefitting from such instruction; and

(e) activities of vocational student organizations which are an integral part of the vocational instruction, subject to the provisions of section 104.513.

(73) Vocational objective - The occupational outcome of training and other preparation as stated by an individual student. It is usually stated in terms of a specific job title.

(74) Vocational policy - Board of Public Education policies for vocational education are philosophical statements that set forth the broad, general intent and purpose of the Board and provide the necessary direction for development of administrative guidelines and procedures.

(75) Vocational student organization - An organization of students in vocational programs which serves members by providing opportunities for leadership, citizenship and character development. The organization enhances the vocational instruction program by providing motivation for personal achievement and appreciation of life roles. Activities are considered an integral part of the program and are carried out at local, state and national levels in affiliation with such organizations as Future Farmers of America, Future Homemakers of America, Distributive Education Clubs of America, Office Education Association, or Vocational Industrial Clubs of America.

(76) White, not of Hispanic origin - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

(77) Work study (vocational) - Programs administered to any youth who:

(a) has been accepted for enrollment as a full-time student in a vocational education program which meets the standards prescribed by the State Board and the local educational agency for vocational education programs assisted under the Act, or in the case of a student already enrolled in such a program, is in good standing and in full-time attendance;

(b) is in need of the earnings from such employment to commence or continue the student's vocational education program; and

(c) is at least 15 years of age and less than 21 years of age at the commencement of the student's employment, and is capable, in the opinion of the appropriate school authorities, of maintaining good standing in his or her vocational education program while employed under the work-study program.

Sub-Chapter 2

Governance and Administration

48-2.26(2)-S2610 AUTHORITY OF THE BOARD OF PUBLIC EDUCATION. (1) Board of Public Education Policy: There shall be a comprehensive state plan for vocational education in Montana and the Board of Public Education shall be the sole agency to disburse federal and state vocational funds and to plan, coordinate, govern, and provide leadership for the total state vocational education system at all levels and in all areas of the state so that vocational education can be coordinated, articulated, and made relevant for students, parents, business, industry, labor, and society. The Board of Public Education recognizes the need for coordination with other governing agencies where a possible conflict of authority may exist.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Office and the staff of the Department of Vocational and Occupational Services shall prepare the Montana State Plan for Vocational Education in consultation with the State Planning Council and the Montana Advisory Council for Vocational Education. The plan shall be prepared in accordance with the Board of Public Education policies and instructions and guidance provided by the United States Office of Education.

(b) The Board shall review the Montana State Plan for Vocational Education and certify the Planning Council's involvement in the development of the plan and certify that public hearings were held so that interested people in the state had a voice in its preparation.

(c) The Board shall approve the State Plan and shall attach a certificate that the plan has been approved by the Board and the approved plan shall be the basis for operation and administration of vocational education.

(d) The State Plan shall be forwarded to the Attorney General and to the Montana Advisory Council for Vocational Education for certification and then shall be sent to the Commissioner of Education, United States Office of Education, for approval.

(e) Preparation of any other plan for vocational education shall not be authorized.

(f) All state and federal funds appropriated or designated for vocational education shall in accordance with state law, be deposited with the state treasurer who shall disburse such funds at the direction of the Board of Public Education and the Executive Officer of vocational education.

(g) The Executive Officer shall coordinate and consult with other governing agencies if it appears there may be a conflict of authority concerning administration of vocational education. Unresolved problems will be presented to the Board for further action.

48-2.26(2)-S2620 RESPONSIBILITY OF THE EXECUTIVE OFFICER OF VOCATIONAL EDUCATION. (1) Board of Public Education Policy: The Executive Officer of vocational education is the State Superintendent of Public Instruction who is the Board's executive officer for vocational education programs and courses offered in Montana which are under the jurisdiction of the Board of Public Education. The Executive Officer shall have the authority necessary to carry out the duties and responsibilities placed upon the Executive Officer by the Board of Public Education and shall be responsible for following and enforcing all policies and procedures adopted by the Board of Public Education.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer of vocational education is the elected State Superintendent of Public Instruction.

(b) The Executive Officer is responsible to the Board of Public Education for the quality of vocational programming in Montana.

(c) The Executive Officer is responsible for the enforcement of all policies adopted by the Board of Public Education.

(d) The Executive Officer shall keep the Board informed of his/her vocational actions and activities in the state.

(e) Appeals from actions or decisions of the Executive Officer shall be made to the Board chairman. Appeals and requests for hearings must be in writing and submitted not less than fifteen (15) working days prior to a regularly scheduled Board meeting. Appeals are to be directed to the Executive Officer who shall schedule the hearing and notify the appellant of the time and place of the hearing.

48-2.26(2)-S2630 APPOINTMENT OF STATE VOCATIONAL EDUCATION STAFF. (1) Board of Public Education Policy: The Executive Officer of vocational education shall have the authority to appoint the necessary staff, with confirmation by the Board, to assure the Board of Public Education that Board policies are adhered to and that state program consultants are available to serve the educational institutions of Montana which are now, or shall be in the future, offering vocational education programs and/or courses.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer of vocational education shall develop a plan to staff the state office for vocational education which will be adequate to assure the Board of Public Education that Board policies are adhered to and that knowledgeable state program consultants are available to assist in planning vocational programs and activities that are to be offered by educational institutions.

(b) The staff plan may be approved by the Board at any regular or called meeting.

(c) Employment of full-time staff shall be limited to those positions in the approved staff plan.

(d) State program directors and consultants shall have at least the qualifications specified in Sub-Chapter 6.

These procedures shall not be retroactive to employees on staff prior to the date of adoption.

(i) The Executive Officer of vocational education shall follow the procedure of recruitment of professional personnel as outlined in Article V, Section 501 of the Affirmative Action Plan adopted by the Office of Public Instruction.

(ii) The Executive Officer shall establish a screening procedure which will include a screening team from within and outside the office who will select three to five final applicants for professional positions. Final screening shall be done by the members of the staff who are involved or knowledgeable about the position to be filled. The Executive Officer shall be responsible for the final recommendations to the Board of Public Education.

For vocational education professional staff, a member of the Board of Public Education shall be asked to serve on the initial screening team.

(iii) Professional staff selection for vocational education shall be subject to the following additional procedures to fulfill the requirements of 75-7703(3) R.C.M. 1947 regarding confirmation:

(A) The candidate selected as the finalist must agree to have his/her name, resume, classification, and salary submitted to the Board of Public Education members two weeks prior to a regularly scheduled meeting.

(B) If a member of the Board of Public Education objects to the selection, he/she may submit, prior to the Board meeting, a letter stating the objection to the Executive Officer with a copy to the chairman of the Board.

(C) If no objection is received prior to the next regularly scheduled meeting, the candidate will be presented to the Board for a formal decision on confirmation.

(D) If written objection is received, the Board may request further information, defer confirmation, or not confirm the applicant using the written reasons submitted in objection. The Board of Public Education confirmation is continuous based on acceptable yearly evaluations.

(E) Professional staff for vocational education will not be hired without Board of Public Education approval.

(iv) Written notice of employment shall be made by the Executive Officer when final approval is given by the Board of Public Education. The employment notice shall include the information that a six-month temporary status is in effect for the purpose of evaluation of the employee and the employee evaluation of the position.

(A) The first evaluation of the employee shall be made six months after the date of employment by the department administrator and the immediate supervisor of the employee in accordance with the approved Affirmative Action Plan.

(B) Every employee on the professional staff of the Executive Officer is subject to periodic evaluations as deemed necessary by the Executive Officer, department administrator, or immediate supervisor.

(C) Evaulations must be in writing and the employee must be aware of the evaluation which is placed in his/her file and must sign the document.

(v) Professional staff of vocational education shall be subject to the following additional procedures to fulfill the policy of the governing Board of Public Education.

A yearly status report shall be submitted to the Board of Public Education on each of the professional staff of vocational education in executive sessions of the Board during the July meeting.

(vi) Termination of professional staff shall follow Article IX, Section 904 of the Affirmative Action Plan of the Office of Public Instruction.

At the time of a warning interview of unacceptable performance, a request will be made by the Executive Officer to the Board chairman for an executive session to inform the Board of the action at the next regularly scheduled Board meeting.

(vii) Professional staff shall be promoted and transferred according to Article VII, Section 702, of the Affirmative Action Plan.

Administrators of vocational programs reporting directly to the Executive Officer for vocational education are subject to all employment procedures herein outlined and the provisions of 75-7703(3) R.C.M. 1947, except when temporarily assigned on an interim basis to fill a position vacancy.

(viii) The Executive Officer of vocational education shall adhere to the Affirmative Action Plan approved according to the Constitution of the State of Montana:

Article II, Sections 3 and 4
Article X, Section 7
The Montana Human Rights Act of 1974
Sections 64-316 to 64-330, R.C.M. 1947
The Gubernatorial Executive Order 8-73

(ix) All appointments made by the Executive Officer shall be final when confirmed by a majority vote of the Board of Public Education at any regular or called meeting.

48-2.26(2)-S2640 PROMOTION AND IMPROVEMENT OF VOCATIONAL EDUCATION PROGRAMS. (1) Board of Public Education Policy: The Executive Officer of vocational education shall be responsible for promoting and improving vocational education programs offered in the educational institutions of the state.

(2) Executive Officer's Administrative Procedures:

(a) The state staff shall visit educational institutions to consult with administrators, supervisors, and teachers concerning individual vocational programs in order to resolve problems and improve programs that are being planned or are in operation.

(b) The state staff shall conduct seminars, workshops, conferences, and other activities to promote and improve vocational education programs.

48-2.26(2)-S2650 COMPLIANCE WITH FEDERAL RULES AND REGULATIONS. (1) Board of Public Education Policy: The Executive Officer will determine and inform the Board of Public Education that approved vocational education activities within the state are being conducted according to federal and state rules and regulations, and will inform the Board of changes in laws, rules, and regulations.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer and staff may determine, through visitation, evaluation, audit, or reporting procedures, that all approved programs in the state are being conducted according to state and federal laws, rules, and regulations.

(b) If an educational institution is found to be in violation of state and/or federal laws, rules, or regulations, the Executive Officer shall bring the recommended actions to the Board for their consideration.

(c) The Executive Officer and staff shall seek the assistance of the Montana Advisory Council for Vocational Education in continually reviewing state and federal laws, rules, and regulations, and shall inform the Board of any significant changes at any regular or called meeting or by mail.

(d) If changes in state or federal law, rules, or regulations require changes in Board of Public Education policies or procedures, the Executive Officer for vocational education shall recommend necessary changes.

48-2.26(2)-S2660 MONTANA ADVISORY COUNCIL FOR VOCATIONAL EDUCATION. (1) Board of Public Education Policy: The Executive Officer of vocational education shall actively solicit the advice and counsel of the Montana Advisory Council for Vocational Education on matters pertaining to the evaluation and further development and improvement of vocational education.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer or designated representative shall meet regularly with the Executive Director of the Advisory Council in order to coordinate their activities and exchange information.

(b) The Executive Officer or designated representative shall attend meetings of the Advisory Council and shall provide the council with information concerning vocational education to assist the council in performing its duties.

(c) Members of the Montana Advisory Council for Vocational Education and staff shall be invited to serve on evaluation teams.

48-2.26(2)-S2670 PUBLIC INFORMATION ON VOCATIONAL EDUCATION. (1) Board of Public Education Policy: The Executive Officer of vocational education shall keep the Board of Public Education and the public informed of both the progress and the problems of vocational education in Montana and shall collect, analyze, interpret, and communicate

vocational education information impartially and independently.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer and staff shall develop a system to collect, analyze, interpret, and communicate vocational education information impartially and independently.

(b) The Executive Officer shall keep the Board informed of programs, problems, conditions, or future directions of vocational education. Reports from the Executive Officer may be scheduled at any regular or called meeting of the Board.

(c) The Executive Officer and staff shall provide timely information to the public through newsletters or public communication channels.

48-2.26(2)-S2680 LOCAL VOCATIONAL ADMINISTRATORS' RESPONSIBILITY FOR PROGRAM QUALITY. (1) Board of Public Education Policy: Vocational education programs offered at the local level shall be under the guidance of a vocationally approved administrator, supervisor, or instructor who has the responsibility, within his/her own institutional level, to insure that quality is maintained in vocationally funded programs under his/her guidance and that these programs are in compliance with all federal and state requirements, directives, and laws.

(2) Executive Officer's Administrative Procedures:

(a) All Board approved vocational programs shall be under the local guidance of a vocationally approved administrator, supervisor, or instructor.

(b) The local vocationally approved administrator, supervisor, or instructor is responsible for the quality of the local vocational program. If a local administrator, supervisor, or instructor fails to fulfill his/her responsibility, vocational education funding may be withdrawn by the Board of Public Education.

(c) The postsecondary center directors are responsible to the Board of Public Education and the the Executive Officer of vocational education for the proper expenditure of all vocational funds at the centers for proper administrative operations at the centers.

48-2.26(2)-S2690 LOCAL POLICIES AND PROCEDURES. (1) Board of Public Education Policy: Policies and procedures adopted for vocational education at the state and local levels shall be consistent with the Board of Public Education policies and procedures.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer and staff shall determine that policies and procedures adopted at the local level are consistent with policies and procedures of the Board of Public Education.

(b) If the Executive Officer and staff determine that local policies and procedures are not consistent with the Board of Public Education policies and procedures, a plan of action shall be recommended to the Board of Public Education by the Executive Officer.

48-2.26(2)-S26000 MANPOWER TRAINING PROGRAMS ADMINISTRATION. (1) Board of Public Education Policy: Manpower training flowing through the Board of Public Education which provides for instruction by educational institutions shall be administered by the Executive Officer of vocational education through collaboration with local education institutions and/or other state agencies where such training is needed. The Board recognizes that students from Indian reservations and/or other groups within the State of Montana may need special consideration.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer shall be the administrator with primary responsibility for manpower training programs.

(b) The Executive Officer shall cooperate and collaborate with other state agencies and with local educational institutions to insure that quality programs are provided where training is needed.

(c) The Executive Officer shall coordinate with other agencies to insure that there is not a conflict of authority or interest and that there is not a duplication of services.

48-2.26(2)-S26010 VOCATIONAL EDUCATION RECORDS. (1) Board of Public Education Policy: The Executive Office of vocational education shall keep all vocational education records in his/her office.

(2) Executive Officer's Administrative Procedures:

(a) All vocational education records required for state level administration and federal reporting shall be maintained in the Department of Vocational and Occupational Services office of the Executive Officer.

(b) The vocational education records are public information and the Executive Officer shall allow public access in accordance with state and federal law.

Sub-Chapter 6

Vocational Education Personnel

48-2.26(6)-S26020 AFFIRMATIVE ACTION POLICIES. (1) Board of Public Education Policy: Recruitment, selection, employment, and advancement of vocational education personnel shall be consistent with current approved institution and/or agency Affirmative Action Plans.

(2) Executive Officer's Administrative Procedure:

(a) Each educational institution requesting funds for vocational programs shall operate administratively under an approved affirmative action plan.

48-2.26(6)-S26030 OCCUPATIONAL AND PROFESSIONAL CERTIFICATION STANDARDS. (1) Board of Public Education Policy: Vocational education instructional and administrative personnel staff shall satisfy minimum occupational and

professional certification standards established and periodically reviewed and updated by the Board of Public Education, and shall continually meet the state's recertification standards established by the Board of Public Education if any part of their salary is to be paid from funds appropriated for vocational education.

(2) Executive Officer's Administrative Procedures:

(a) State administrative and consultant personnel.

(i) State administrators of vocational education minimum qualifications:

(A) Education. A master's degree with extensive preparation as a teacher, supervisor, or administrator of vocational education.

(B) Experience. A minimum of three years full-time experience as an administration of vocational education programs. At least five years experience as a vocational education instructor, consultant, or journeyman vocational craftsman.

(ii) Assistant administrator's minimum qualifications:

(A) Education. A master's degree with extensive preparation as a teacher, supervisor, or administrator of vocational education.

(B) Experience. A minimum of three years full-time experience as a vocational education supervisor or consultant or any combination of five years as a vocational education instructor, consultant, or journeyman vocational craftsman.

(iii) Fiscal office accountant's minimum qualifications:

(A) Education. Shall meet qualifications for certification as a teacher in the area of specialization in vocational education and shall hold a master's degree or equivalent education and/or experience with a major in the vocational area of specialization or a closely related area.

(B) Experience. A minimum of three years experience as a vocational instructor in the area of speciality or a closely related area. A minimum of one year of vocational experience in the world of work in the area of speciality or a closely related area.

(iv) State program consultants minimum qualifications:

(A) Education. Shall meet qualifications for certification as a teacher in the area of specialization in vocational education and shall hold a master's degree or equivalent education and/or experience with a major in the vocational area of specialization or a closely related area.

(B) Experience. A minimum of three years experience as a vocational instructor in the area of speciality or a closely related area. A minimum of one year of vocational experience in the world of work in the area of speciality or a closely related area.

(v) Assistant state program consultants minimum qualifications:

(A) Education. Shall meet qualifications for certification as a teacher in the area of specialization in vocational education and shall hold a bachelor's degree with

a major in the vocational area of specialization or a closely related area.

(B) Experience. A minimum of three years experience as a vocational instructor in the area of speciality or a closely related area. A minimum of one year of vocational experience in the world of work in the area of speciality or a closely related one.

(vi) Planning, research and evaluation consultant minimum qualifications:

(A) Education. Shall meet qualifications for certification as a teacher in one vocational field and shall hold at least a master's degree. Shall have specialized training in research methods.

(B) Experience. A minimum of three years experience conducting educational research or other research related to vocational education.

(vii) Special needs consultant minimum qualifications:

(A) Education. Shall meet qualifications for certification as a teacher in the area of specialization in vocational education and shall hold a master's degree with a major in the vocational area of specialization or a closely related area.

(B) Experience. A minimum of three years experience as a vocational instructor in the area of speciality or a closely related area. A minimum of one year of vocational experience in the world of work in the area of speciality or a closely related area.

(viii) Vocational guidance consultant minimum qualifications:

(A) Education. Shall meet qualifications for certification as a vocational counselor and shall hold a master's degree in educational counseling with emphasis on vocational counseling.

(B) Experience. A minimum of three years experience as a vocational counselor. A minimum of one year of vocational experience in the world of work or three years experience as a vocational instructor.

(ix) Local administrators, consultants, and teacher personnel. Qualifications of vocational administrators, supervisors, instructors, counselors, or others in vocational positions must be approved by the Executive Officer of vocational education if any part of their salaries is to be paid from funds appropriated for vocational education. Institutions must request approval by submitting a Statement of Qualifications (SOQ) form to the Executive Officer of vocational education. Individuals applying for postsecondary center director positions must meet Board of Public Education approved qualifications prior to local employment as a center director.

(x) Local deans, directors, or supervisors. Deans, directors, or supervisors of vocational education shall hold a minimum of a master's degree from an accredited college or university, shall have at least one year of successful

experience in business or industry, and shall be knowledgeable in and have an understanding of the vocational education program of the state. Deans, directors, or supervisors of vocational education shall also have at least three years of teaching or administrative experience in vocational education.

(xi) Local guidance counselors. Local vocational guidance counselors shall hold a graduate degree in an appropriate counseling program from a recognized college or university and shall have one year of wage earning experience (postsecondary--three years) outside the field of professional education. One year of this wage earning experience shall be recent and continuous. One year of appropriate teaching may be considered by the Executive Officer in lieu of one year of employment experience when specifically recommended by the local education institution. The candidate must have demonstrated the ability to work successfully in a counseling situation.

(xii) Local teacher certification requirements. Vocational education instructors must have a combination of work experience and education that directly contributes to the competencies required in the occupational area being taught the following minimums apply

(A) Degree teachers.

Agriculture Occupations. Bachelor's degree in agriculture education plus one year occupational experience.

Business and Office Occupations. Bachelor's degree in business and office education plus one year occupational experience.

Health Occupations. Bachelor's degree in professional health field plus one year occupational experience within the last five years.

Home Economics, Consumer. Bachelor's degree in home economics education.

Home Economics, Occupational. Bachelor's degree in home economics education plus one year occupational experience.

Marketing and Distributive Occupations. Bachelor's degree in distributive education plus one year occupational experience.

Technical Occupations. Bachelor's degree in technical, scientific, or mathematical education plus one year occupational experience.

Trade and Industry. Bachelor's degree in trade and industry education plus one year occupational experience or a bachelor's degree in Industrial Arts education plus three years occupational experience.

Cooperative Program Coordinator. Bachelor's degree in an occupational field of education plus three years of occupational experience and/or teaching experience in a related vocation or skills trade, one year of which provided continuous employment in a single vocation or trade. The candidate must be able to work with individual employers in designing specific training stations for cooperative students.

(B) Non-degree teachers. Five years occupational experience; twelfth grade education or equivalent. Within five years of initial certification, acquisition of 15 quarter credits of college work in general education and 10 credits or its equivalent of student teaching. Three years teaching experience on a temporary certificate may be substituted for the student teaching requirement as determined by state policies for waiver of student teaching.

(C) Professional preparation. In addition to the requirements in (aa) and (ab), all vocational education instructors must complete six professional vocational courses or their equivalent in the following topics: educational principles or philosophy; curriculum construction or job analysis; preparation of instructional materials; teaching methods--vocational subjects; organization and management; vocational guidance.

(D) Criteria for evaluation occupational experience. A resume of occupational experience must be submitted listing dates and estimated total hours of employment, specific duties and tasks performed, names and addresses of immediate supervisors, and other material which serves as evidence of occupational experience applicable to the teaching area.

Part-time, self-employed, military, and specialized occupational experience will be evaluated on an individual basis.

When required in licensed programs, the instructor must meet occupational licensing standards of the appropriate regulating agency.

Successful completion of an approved trade competency exam may substitute for a portion of the work experience requirement.

48-2.26(6)-S26040 INSTRUCTIONAL COMPETENCIES. (1) Board of Public Education Policy: The development of instructional competencies and the maintenance and improvement of occupational skills shall be the shared responsibility of the individual, the local educational institution, the teacher training institutions, and the executive office of vocational education.

(2) Executive Officer's Administrative Procedures:

(a) To discharge his/her responsibilities, the Executive Officer may initiate, but is not limited to, the following activities:

(i) Plan programs, seminars, conferences, and workshops to develop or improve instructional competencies of instructors and other vocational education personnel.

(ii) Plan programs or systems that will provide for periodically sending vocational education personnel back to business or industry to keep them abreast of current practices.

(iii) Review and make recommendations to the Board of Public Education for plans on courses and workshops submitted for funding by the teacher training institutions for the development and improvement of instructional competencies.

48-2.26(6)-S26050 PRESERVICE AND INSERVICE PROGRAMS. (1) Board of Public Education Policy: The Executive Officer of vocational education shall promote programs of preservice and inservice education for instruction, supervisory, administrative, teacher training, and support personnel in vocational education.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer shall encourage teacher training institutions to submit plans for preservice programs which shall prepare individuals to function as administrators, supervisors, teachers, and counselors.

(b) The Executive Officer shall encourage and assist in planning inservice education programs submitted by teacher training institutions.

(c) The Executive Officer shall encourage local and state vocational staff to attend industrial schools, seminars, or other activities in vocational education in order that staff may be better prepared for their professional assignment in vocational education.

Sub-Chapter 10

Vocational Education Programs

48-2.26(10)-S26060 PROGRAM APPROVAL. (1) Board of Public Education Policy: Vocational education programs shall have prior approval by the Board of Public Education upon recommendation of the Executive Officer of vocational education if they are to receive vocational education funds.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer of vocational education shall recommend to the Board which programs should be approved and why, based on criteria approved by the Board of Public Education and consistent with state and federal law.

(b) All programs shall have a vocational objective. The program subject matter must consist of the knowledge and skills required for the student's successful performance in the vocation. Program titles must refer to vocational objectives and relate to Office of Education codes.

(c) All significant curriculum changes must be approved by the Executive Officer of vocational education. Change requests are accomplished by submitting both the current and revised curricula, with a cover letter indicating the reason(s) for the change and the date that the change is to become effective.

(d) A syllabus for each vocational course in a program for which the institution is approved must be on file.

(e) All programs having a licensure agency must meet requirements of that agency and must prepare the student to be licensed or certified by the statutory licensing board or agency of Montana, the federal government, or by an organization with widely accepted certification authority when state licensure is not required.

(f) All prepatory instruction funded by the Board of Public Education must be in accordance with approved programs. All such courses, seminars, practicums, etc., must be offered only as part of an approved program.

(g) Requests for approval of preparatory programs for secondary students must be submitted for board approval at least four (4) months in advance of the starting date of the program. Postsecondary preparatory programs may be submitted at any time, but must function under the center budget approved by the Board of Public Education.

(h) Requests for approval of adult vocational courses may be submitted at any time, but must be approved before the starting date of the course.

Application for new programs must be made on Office of Public Instruction form. In general, each item on the application must be completed with careful attention given to details. If necessary or desirable, supporting materials should be attached.

48-2.26(10)-S26070 BASIS FOR PROGRAM OFFERINGS. (1) Board of Public Education Policy: Vocational education program offerings shall be determined on the basis of identifiable student interest and needs, vocational advisory committee recommendations, employment statistics, and current occupational surveys.

(2) Executive Officer's Administrative Procedures:

(a) Programs to meet virtually any vocational training need may be developed and offered. Such programs may include but not be limited to one of the following major areas for purposes of funding: agriculture, consumer homemaking, wage earning homemaking, distribution and marketing, business and office, technical, industrial, health occupations, prevocational, adult vocational, guidance and counseling, research, exemplary, curriculum development, special needs, disadvantaged or handicapped, and teacher training.

(b) In determining which vocational education programs are to be offered or to justify a program, the basis of determination or justification shall be:

(i) Identifiable student interest and needs.

(ii) Vocational advisory committee recommendations.

(iii) Employment statistics.

(iv) Current occupational surveys.

(c) Requests for program approval must be accompanied by the above information to assist the Executive Officer and the Board in determining if the program is to be approved.

(d) In any two-year program, the sequence of the curriculum should be such that students will develop some basic marketable skills during the first year.

In order for state staff members to review programs being operated in local institutions, each institution must maintain current files and records such as course syllabi, cooperative training plans, curricula and course descriptions as approved, inventories of all equipment purchased with vocational funds, annual application, revisions, and supporting schedules, audits, follow-up data, and enrollment reports.

48-2.26(10)-S26080 TYPES OF PROGRAMS TO BE OFFERED. (1) Board of Public Education Policy: Vocational education programs shall be designed to prepare or retrain youth and adults for employment or for advancement in recognized and new and emerging occupations, or to prepare individuals for enrollment in advanced vocational education programs, recognizing the prevocational aspects of some programs. Consumer homemaking programs as established in the Montana State Plan for Vocational Education shall also be included under this policy.

(2) Executive Officer's Administrative Procedures:

(a) Vocational education programs shall be designed to prepare or retrain youth and adults for employment or advancement in recognized or new and emerging occupations (with the exclusion of consumer homemaking).

(b) Prevocational programs may also be designed which prepare individuals to enter a more advanced vocational education program.

(c) Special vocational programs may be designed to provide training for disadvantaged and handicapped students, but when feasible, such students should be enrolled in regular programs with special training provided or the program should be modified to meet the students' needs.

(d) Lack of evidence that a program will prepare students for employment may cause the program to be disapproved (with the exclusion of consumer homemaking).

48-2.26(10)-S26090 LOCAL ADVISORY COUNCILS. (1) Board of Public Education Policy: Institutions offering vocational education programs shall have a local advisory council composed of representatives from management, labor, and citizens-at-large to consult with and advise school administrators on matters pertaining to the development and improvement of vocational education.

(2) Executive Officer's Administrative Procedures:

(a) Institutions offering vocational education programs will have a local advisory council with members representing management, labor, and the community at large to consult with and advise school administrators on matters pertaining to vocational education. The local advisory council is required to meet at least once per year, and the

minutes of the meeting must be on file at the local institution.

(b) The local advisory council function is to assist school administrators in determining types of programs to be offered, establishing priorities, building programs for vocational education facilities, and other general areas affecting all vocational programs.

48-2.26(10)-S26100 PROGRAM ADVISORY COMMITTEES. (1) Board of Public Education Policy: Each vocational education program shall have a program advisory committee composed of but not limited to representatives from amanagement and labor to consult with administrators and teachers on program matters.

(2) Executive Officer's Administrative Procedures:

(a) A program advisory committee must be appointed for each vocational education program. Members should represent management, labor, and other interested groups and should consult with teachers and administrators on program matters such as curriculum, courses, equipment, facilities, evaluation, job skills, and placement. The program advisory committee is required to meet at least once per year and the minutes of the meeting must be on file at the local institution. It is recommended that advisory committees meet quarterly.

(b) Requests for program approval or requests for changes in a program should be accompanied by recommendations from the program advisory committee.

(c) Local program advisory committees must be functional before a new program is started and must have input into the curriculum development of the new program.

48-2.26(10)-S26110 EDUCATIONAL INFORMATION SYSTEM. (1) Board of Public Education Policy: Institutions offering vocational education programs and/or courses shall provide information to the Executive Officer for a state educational information system to aid in program decision-making and Board of Public Education analysis.

(2) Executive Officer's Administrative Procedures:

(a) Institutions offering vocational education programs or courses must provide information for a state educational information system.

(b) Reporting forms developed by the Executive Officer and approved by the Board shall be furnished to the local institution for reporting purposes.

(c) Institutions shall report on a timely basis in order for the Board and the Executive Officer to use the information in decision-making and to prepare required state and federal reports.

(d) Failure of institutions to submit required information may result in loss of appropriations.

48-2.26(10)-S26120 INFORMATION, GUIDANCE, AND PLACEMENT. (1) Board of Public Education Policy: Institutions offering

vocational education programs and/or courses shall provide occupational information, guidance, and placement services for their students.

(2) Executive Officer's Administrative Procedures:

(a) Institutions offering vocational education programs and courses shall provide occupationa information, guidance, and placement information and/or services for their students.

(i) Each vocational-technical center shall provide library media center services when possible.

(ii) Each vocational-technical center should provide students the opportunity to grow in non-classroom areas by allowing students to organize student governments, intramural sports, a newspaper, clubs, and similar student activities.

(iii) Each vocational-technical center should have a bookstore, student lounge, lunch counter, and similar services where practical.

(b) Each vocational-center shall have at least one qualified vocational guidance counselor and others as may be determined by the institution.

(c) The Executive Officer and staff shall determine if these services are being offered by each institution.

48-2.26(10)-S26130 PROGRAM DUPLICATION. (1) Board of Public Education Policy: There shall be cooperative planning at the local and state levels, between institutions offering vocational education programs, labor, industry, and other governmental or civic agencies concerned with delivery of vocational education, to avoid unnecessary duplication.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer and staff shall encourage cooperation at all levels and between all agencies.

(b) The Executive Officer shall make every effort to avoid unnecessary duplication when recommending programs for approval.

(c) When apparent duplication exists, institutions must provide adequate data to justify the need of the program in order for it to be approved.

(d) Vocational-technical centers may sponsor workshops or seminars in conjunction with other agencies or private industry.

48-2.26(10)-S26140 LEVEL OF PROGRAM FUNDING. (1) Board of Public Education Policy: Vocational education funds shall not be used for programs below the 9th grade of an educational institution, and programs shall be designed to serve individuals of secondary school age or older, including those who have education, socioeconomic, physical disadvantages and handicaps, or those who have been identified to have cultural differences with special needs.

(2) Executive Officer's Administrative Procedures:

(a) Vocational education programs below the 9th grade level shall not be approved for funding.

(b) Programs may be approved which have been designed to serve the following groups:

(i) Individuals of secondary school age (9th through 12th grades).

(ii) Individuals older than secondary school age (postsecondary and adult).

(iii) Individuals in the above groups who have educational, socioeconomic, cultural, physical, and/or other disadvantages and handicaps.

(c) Vocational student organizations shall be encouraged as an integral part of vocational education instructional programs in public schools for the purpose of complementing and enriching instruction.

(i) Each vocational education program instructor shall be encouraged to serve as an advisor to a local vocational student organization.

(ii) State program consultants in the Department of Vocational and Occupational Services, Office of Public Instruction, shall serve as state advisors and provide effective leadership at the state level.

(iii) Teacher educators shall be encouraged to provide instruction in the philosophy, techniques, and operation of vocational student organizations.

Sub-Chapter 14

Vocational Education Funding

48-2.26(14)-S26150 FEDERAL, STATE, AND LOCAL FUNDING. (1) Board of Public Education Policy: The Board of Public Education and the Executive Officer of vocational education shall work toward assuring adequate funding of Montana's vocational education programs from all levels of government (federal, state, and local).

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer shall conduct cost studies to determine funding requirements for vocational programs.

(b) The Executive Officer shall be prepared to provide to the state and local boards, governor, and state legislature a complete analysis of vocational education program budgets.

(c) The Executive Officer shall disseminate the program funding requirements to the educational institutions of Montana.

(d) Distribution of funds shall be in accordance with the State Plan.

48-2.26(14)-S26160 DISBURSEMENT OF FEDERAL FUNDS. (1) Board of Public Education Policy: The Board of Public Education shall be responsible for the disbursement of state and federal funds for vocational education.

(2) Executive Officer's Administrative Procedures:

(a) The Board of Public Education is responsible for

the disbursement of state and federal funds for vocational education.

(b) All funds appropriated for vocational education by the state legislature or received from federal sources shall be deposited in the state treasury in accordance with state law.

(c) Vocational funds shall be allocated to local institutions on an equitable and objective basis. A method used for allocation of funds shall be developed by the Executive Officer and approved by the Board of Public Education.

48-2.26(14)-S26170 ALLOCATION OF VOCATIONAL EDUCATION FUNDS. (1) Board of Public Education Policy: In determining the allocation of vocational education funds to local educational institutions, the Board of Public Education and the Executive Officer of vocational education shall review and consider such factors as: identified needs of vocational education for the population within the local educational institution's district, region, state, and the nation; the compatability of such program offerings with the state's long-range vocational education objectives; the excess cost of the program offerings and local and state ability to support the program; and program duplication and how this duplication might affect the other educational institutions in the state.

(2) Executive Officer's Administrative Procedures:

(a) In determining the basis of allocation of funds, the Board and the Executive Office shall consider PL 94-482, State Plan funding formula, and relative factors including but not limited to:

(i) Identified needs of vocational education within the local education institution's district, region, state, and nation.

(ii) Compatibility of program offerings with the state's long-range vocational education objectives.

(iii) Necessary excess costs of program offerings and the local and state ability to support the program.

(iv) Program duplication and effects of duplication on other educational institutions.

(b) Funding for vocational programs shall follow the state fiscal year and USOE fiscal requirements.

(c) Each institution requesting funds for a vocational program must submit annual application. The approved programs shall be only the programs eligible for funding from vocational funds administered by the Board. This list is subject to amendment as necessary.

(d) New programs or courses shall not be placed on the approved list prior to being approved by the Board of Public Education.

48-2.26(14)-S26180 EXPENDITURE OF FUNDS. (1) Board of Public Education Policy: The expenditures by an institution of any funds received under the provisions headed "Vocational Education" shall be limited to those elements of costs approved by the Board of Public Education for vocational education.

(2) Executive Officer's Administrative Procedures:

(a) The Executive Officer shall compile a list of "elements of cost" for which vocational education funds may be used. The list shall be official only after Board approval, and no new item will be added to the list without Board approval.

(b) Expenditure of vocational education funds by local institutions shall be limited to the elements of cost approved by the Board.

(c) Each institution must maintain a current inventory of equipment initially costing $300 or more which was purchased with federal/state vocational funds.

(d) All such equipment must be marked or otherwise identified in order to make it easily distinguishable from equipment purchased with other than vocational education funds.

(e) Vocational education equipment acquired by a school with vocational funds appropriated by the legislature and administered by the Board of Public Education may not be sold, leased, rented, diverted, or put to any other use without prior written permission from the Board of Public Education.

(f) Whenever vocational education school facilities or items of major equipment in which the Board of Public Education has participated in funding are sold or no longer used for vocational purposes, the Board is to be credited with its proportional share of the value of such facilities or equipment at that time. The value shall be determined on the basis of the sale price or the fair market value in the case of discontinuance of use for a vocational education purpose.

(g) Equipment purchased with vocational education funds may be used for trade-in credit on the purchase of other Board approved vocational equipment. If equipment is sold, it must be sold to the hightest bidder and the proceeds are to be handled as described in (2)(f).

(h) Verification records of expenditure, administered by local education institutions and/or public institutions under the State Plan shall be maintained in the files of the administering local institution and are subject to audit by the Executive Officer's vocational staff or the state auditor. Such records shall be retained on file for a period of five (5) years.

(i) In addition to the procedures outlined above, local education institutions and/or public institutions receiving vocational funds shall comply with all applicable state and federal statutes, with provisions of the State Plan, and with

the rules and regulations of the Board of Public Education and the state auditor.

48-2.26(14)-S26190 BOARD OF PUBLIC EDUCATION STUDENT FEES. (1) Board of Public Education Policy: Unless otherwise provided by state statute, the Board of Public Education shall be responsible for and have the power to establish student enrollment fees and the rules governing the collection and expenditure of such fees. The Board recognizes the need for a cooperative coordination with other governing agencies where a possible conflict of authority may exist. (This section applies to postsecondary vocational-technical center students only.)

(2) Executive Officer's Administrative Procedures:

(a) Student fees.

(i) Student application fee. The student application fee shall be collected only once from each applying student. This fee of $10 will serve to support the costs of processing the student application and permanent file. The student application fee shall decrease the Board of Public Education fee by the amount of $10 for the quarter during which the application fee is collected. Therefore, it must be considered as part of the Board of Public Education fee.

The centers shall not maintain more "fee paid students (applications" on their waiting list than the total number of student stations in the program.

It is understood that the "fee paid students" shall receive communication from the institutions as necessary to keep them informed regarding the progress of their application. All other students wishing to be considered for the program shall be put on a list which requires no fee to be paid. The individual on the list will not receive directed communication from the institution and will be responsible for initiating any requests he/she might have regarding his/her status. No program guarantees shall be made to any student until a fee is collected and an application processed. The Montana resident students shall be accepted for training on a first come, first served basis.

(ii) Board of Public Education fee. The Board of Public Education fee is $40 per quarter. Open-entry/exit students registering for less than half a quarter of instruction shall not pay the full Board of Public Education fee but shall be required to pay the $10 student application fee and $20 of the Board of Public Education fee.

(iii) Program charges. Such charges deemed necessary by the institution providing students with essentials, personal service, and/or items required for the programs will be charged as needed.

(iv) Deferments and waivers. No waivers and/or deferments of fees and/or tuition are authorized.

(v) Late registration fee. There is no late registration fee.

(vi) Timing of fee collection. All fees, tuition, and program charges will be collected on a quarterly basis.

(b) Tuition.

(i) Tuition shall not be charged to any resident of the state of Montana by the governing board of any post-secondary vocational-technical center (School Laws of Montana, 75-7713).

(ii) The five postsecondary centers may charge tuition of any nonresident provided that if tuition is charged, it shall be charged only on the basis of the Board of Public Education policies, rules, and regulations.

(iii) Residence. The residence of a student shall be determined in accordance with Section 75-7713, R.C.M. 1947.

(iv) Out-of-state tuition. The annual $600 out-of-state tuition for nonresident students attending Montana postsecondary vocational-technical centers shall be assessed at $150 per quarter, payable in advance of the quarter the nonresident student attends.

(v) Part-time nonresident. Part-time nonresident students (less than 20 hours per week) shall pay one-half of the tuition paid by the full-time nonresident student.

(c) Refund of tuition and program charges.

(i) Refunding application fee. The application fee is nonrefundable.

(ii) Refunding of Board of Public Education fee. The Board of Public Education fee is not to be refunded after the student has begun training.

(iii) Refunding of tuition is as follows:

During first week	$125
During second week.....	100
During third week	75
During fourth week	50
During fifth week	25
After fifth week	0

(iv) Refunding of program charges. Program charges are not to be refunded if the student has received services and/or items.

Vocational-technical centers which are not accredited by a nationally recognized agency or association shall refund unused fees and charges to veterans and other eligible persons according to the provisions of Veterans Administration regulations 14254(c)(13). Provisional accreditation shall not be considered in respect to this policy.

(d) Expending collected fees and tuition.

(i) Application and Board of Public Education fees. The application and Board of Public Education fees will be deposited with the county treasurer to be used as part of the institutional budget.

(ii) Program charges. Program charges are expended on a cost reimbursement basis.

The Board of Public Education shall review proposed income and expenditure of student fees, tuition, and program charges prior to the beginning of each fiscal year.

48-2.26(14)-S26200 UNIFORM ACCOUNTING AND REPORTING. (1) Board of Public Education Policy: A uniform accounting and reporting system shall be developed and implemented by the Executive Officer and approved by the Board of Public Education which will clearly identify receipts, disbursements, and balances of all funds used to finance vocational education.

(2) Executive Officer's Administrative Procedures:

(a) A uniform accounting/reporting system will be developed by the Executive Officer, approved by the Board, and implemented. The accounting system will identify clearly receipts, disbursements, and balances of all funds used to finance vocational education.

(b) Accounting and reporting forms and procedures will be made available to local institutions.

(c) Local institutions will be required to complete and submit reports on or before due dates set by the Board of Public Education.

(d) The Executive Officer will make a quarterly financial report to the Board of Public Education on vocational funds expended and vocational funds available to be expended on vocational programming.

(e) Each institution shall be held accountable for all funds received through the Board of Public Education for vocational education.

Sub-Chapter 18

Vocational Education Program Evaluation

48-2.26(18)-S26210 EVALUATION. (1) Board of Public Education Policy: Evaluation shall be an integral part of Montana's vocational education system.

(2) Executive Officer's Administrative Procedure: The Executive Officer of vocational education shall evaluate each vocational program approved by the Board of Public Education and receiving vocational funds, with a Board approved program evaluation instrument and evaluation process.

48-2.26(18)-S26220 PERIODIC AND CONTINUOUS EVALUATION. (1) Board of Public Education Policy: There shall be provisions for periodic and continuous evaluation at both state and local levels.

(2) Executive Officer's Administrative Procedures:

(a) Program evaluation shall be conducted periodically and may consist of self-evaluation, review of ongoing programs, on-site committee evaluations, and similar activities.

(b) Each fiscal year, 20 per cent of all secondary and postsecondary programs shall be evaluated by the Executive Officer, and every program must be evaluated once in every five (5) years.

(c) State staff members shall visit institutions in order to obtain certain factual information needed for statistical reports and to determine if Board policies are being followed. Institutions shall provide whatever data is required, arrange for written materials to be made available, and otherwise expedite the work of the person making the visit.

48-2.26(18)-S26230 COOPERATIVE EVALUATION EFFORTS. (1) Board of Public Education Policy: The Executive Officer of vocational education and the Montana Advisory Council for Vocational Education shall cooperate in vocational education evaluation.

(2) Executive Officer's Administrative Procedure: The Executive Officer shall solicit program evaluation advice and help from the Montana Advisory Council for Vocational Education.

Earl J. Barlow

CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State May 15, 1978.

OFFICE OF PUBLIC INSTRUCTION

SPECIAL EDUCATION

EMERGENCY RULES ON HEARING PROCEDURES
AND APPELLATE PROCEDURES FOR
SPECIAL EDUCATION CONTROVERSIES

Statement for reasons for emergency.

Title 75, Chapter 78, of the Revised Codes of Montana, 1947, and the rules promulgated pursuant thereto (Title 48, Chpater 18, A.R.M.) provide for specially designed instruction to meet the unique needs of handicapped children. The statutes and rules encourage active participation by the parents in the continuous process of selecting the best instruction for their handicapped child. Controversies sometimes arise about the identification, evaluation, or educational placement of the child or about the provision of a free appropriate public education to the child. During these controversies, procedural safeguards for the parents and children are essential for protecting the welfare and best interests of handicapped children and for the meaningful participation by the parents. Better procedures for due process protection of handicapped children and their parents should be implemented immediately to reduce the risk of the selection of an improper program of instruction for a handicapped child because his parents did not have a better, more meaningful opportunity to be heard. Such substantive rights for the welfare of these children and their parents are in imminent peril in that special education controversies frequently arise between this date the publication of the July Administrative Register, the soonest that these procedural rules could be adopted under regular procedures.

Handicapped children, their parents, and educational agencies must have standard hearing and appellate procedures for resolving special education controversies arising between this date and the adoption of rules by regular procedures.

The state of Montana is in danger of losing federal funds during fiscal year 1977-1978. Loss of this money will jeopardize certain special education programs and will prejudice future federal funding for special education.

Therefore, having determined that the welfare of handicapped children is in imminent peril because better procedural safeguards for the due process of handicapped children and their parents can be instituted, this standard hearing and appellate procedures are necessary immediately, and that the state of Montana is in danger of losing federal funds, the Superintendent of Public Instruction adopts the following emergency rules:

48-2.18(42)-P18750 HEARING. (1) Scope. A parent or board of trustees may initiate a hearing;

(a) on a refusal of a parent to consent to a pre-placement evaluation by the school district which is providing educational services to the child or by the school district in which the child's parent resides:

(b) on a controversy about the initial placement of a handicapped child in a program providing special education and related services;

(c) on a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a handicapped child;

(d) on a proposal or a refusal to initiate or change the provision of a free appropriate public education to a handicapped child; or

(e) on a written request for an extention of a temporary placement of a handicapped child.

(2) Requests for Hearing. A parent, the board of trustees of the district in which a child's parent resides, or the board of trustees providing educational services to the child may initiate a hearing by filing a written request for a hearing, together with a statement of the reasons therefor and the names and addresses of the parties, with the county superintendent of schools of the county in which lies the school district in which the handicapped child's parent resides.

(3) Notification of Access to Information and Assistance. (a) Upon receipt of a request for a hearing, the county superintendent shall notify the parent in writing:

(i) that the parent or his representative designated in writing shall have access to school reports, files and records pertaining to the child and shall be given copies at the actual cost of copying;

(ii) of any free or low-cost legal and other relevant services available in the area.

(b) Upon request, a parent shall be informed by the county superintendent and the school districts of any free or low-cost legal and other relevant services available in the area.

(4) Conference and Informal Disposition. Upon receipt of a request for a hearing, the county superintendent shall direct the appropriate special education personnel to schedule a conference with the parent within 5 days for the purpose of settling the controversy without hearing.

(5) Notice of Hearing. (a) If the parent cannot attend a conference within the 5 days or the controversy is not settled, the county superintendent shall schedule a hearing at a time and place which is reasonably convenient to the parent and child. In no event shall the hearing take place later than 20 days after receipt of the request

for the hearing.

(b) Written notice of the date, time, and place shall be sent to all parties by certified mail. Notice to the parent shall be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the county superintendent shall direct the notice to be translated orally or by other means to the parent in his native language or other means of communication.

(6) Witnesses. At the request of the parent, the board of trustees of any district which is a party to the hearing shall require the attendance at the hearing of any officer or employee of the district who may have evidence or testimony relevant to the needs, abilities, proposed programs or status of the child.

(7) Evidence. Evidence which a party intends to introduce at the hearing must be disclosed to the other parties at least 5 days before the hearing.

(8) Conduct of Hearing. (a) At the hearing an impartial hearing officer shall hear witnesses and take evidence according to the provisions of this rule and according to the common law and statutory rules of evidence which are not in conflict with the provisions of this rule.

(i) Objections to offers of evidence may be made and the hearing officer will note them in the record.

(ii) To expedite the hearing, if the interests of the parties are not prejudiced, any part of the evidence may be received in written form.

(iii) The hearing officer may take notice of judicially cognizable facts. Parties shall be notified of materials noticed and be given an opportunity to contest materials noticed.

(iv) Where the original of documentary evidence is not readily available the best evidence rule is hereby modified to allow copies of excerpts.

(v) All testimony shall be given under oath or affirmation.

(b) Any party to a hearing has the right to:

(i) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(iv) Obtain a written or electronic verbatim record of the hearing;

(v) Obtain written findings of fact and decisions.

(c) The parent shall have the right to have the child who is the subject of the hearing present.

(d) The hearing shall be closed to the public unless the parent requests an open hearing.

(e) A written or electronic verbatim record of the hearing shall be made.

(f) When necessary, interpreters for the deaf or interpreters in the native language or other mode of communication of a parent shall be provided throughout the hearing at public expense.

(g) The burden of proof shall be upon the board of trustees proposing or refusing a course of action. In the case of a placement question, the personnel must demonstrate why placement is being recommended or denied and why less restrictive placement alternatives would not adequately and appropriately serve the child's educational needs.

(9) Not later than 45 days after the request for hearing is filed with the county superintendent, plus specific time extensions granted at the request of a party, the hearing officer shall:

(a) Reach a final decision in the hearing which is written in language understandable to the general public; and,

(b) Insure that a copy of the findings of fact, conclusions of law, decision and notice of opportunity for administrative appeal is sent by certified mail to each party and the county superintendent. The parent shall receive a copy of the decision in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the hearing officer shall direct the decision to be translated orally to the parent in his native language or other means of communication.

(10) Placement. The child shall remain in his current educational placement until the hearing officer enters a decision following the hearing, except in an emergency situation when the health and safety of the child or other children would be endangered or when the child's presence substantially disrupts the educational programs for other children as provided in Rule 48-2.18(14)-S18120 (1)(c)(vi).

(11) Appeal to the Superintendent of Public Instruction. (a) The decision of the hearing officer is final unless a party to the hearing appeals, to the Superintendent of Public Instruction.

(b) Within 15 days after the finding of facts, conclusions of law, decision, and notice of opportunity for administrative appeal, a party may appeal the decision of the hearing officer to the Superintendent of Public Instruction by filing a notice of appeal with the county superinten-

of Public Instruction receives the notice of appeal, plus specific time extentions granted at the request of a party, a copy of the decision is sent by certified mail to each party and the county superintendent. If the native language or other mode of communication is not a written language, the hearing officer shall direct the notice to be translated orally or by other means to the parent in his native language or other means of communication.

(3) Court Action. The decision of the hearing officer is final unless a party seeks judicial review pursuant to section 82-4216, R.C.M. 1947 or brings a civil action pursuant to 20 U.S.C. 1415.

(4) Placement. The child shall remain in his current educational placement until the hearing officer enters a decision, except in an emergency situation when the health and safety of the child or other children would be endangered or when the child's presence substantially disrupts the educational programs for other children as provided in Rule 48-2.18(14)-S18120(1)(c)(vi). (History: Sec. 75-7802, R.C.M. 1947; IMP Sec. 75-7802, R.C.M. 1947; EMERG NEW, Eff 5/15/78)

48-2.18(42)-P18770. IMPARTIAL HEARING OFFICER. (1) Lists. Each county superintendent and the Superintendent of Public Instruction shall keep a list of persons who serve as hearing officers. The list must include a statement of qualifications of each person to hear and decide special education controversies.

(2) Selection for a Hearing. (a) Upon filing of the request for a hearing, the county superintendent shall mail to each party a list of 5 or more proposed hearing officers together with their qualification.

(b) A party shall have 7 days to study the list, cross off any names objected to, number the remaining names in order of preference, and return the list to the county superintendent. Requests for more information about proposed hearing officers must be directed to the county superintendent. As few names as possible should be crossed off.

(c) If, despite all efforts to arrive at a mutual choice, the parties cannot agree upon a heaing officer, the county superintendent will make an appointment, but in no case will a hearing officer whose name was corssed out by any party be so appointed.

(3) Selection for Administrative Appeal. (a) Upon receiving a copy of the notice of appeal the Superintendent of Public Instruction shall mail to each party a list of 5 or more proposed hearing officers together with their qualifications.

(b) A party shall have 7 days to study the list, cross off any names objected to, number the remaining names in order of preference, and return the list to the Superintendent of Public Instruction. As few names as possible

dent. The party appealing shall mail a copy of the notice of appeal to all other parties and the Superintendent of Public Instruction.

(c) The notice of appeal shall state:

(i) the name of the party appealing;

(ii) the name(s) and address(es) of the other parties to the hearing;

(iii) a copy of the findings of fact, conclusions of law and decision being appealed;

(iv) a brief statement of the reasons for the appeal; and,

(v) the signature and address of the party appealing or representatives.

(d) Upon receipt of the notice of appeal, the county superintendent will cause the record to be compiled and forwarded to the Superintendent of Public Instruction. The record shall contain:

(i) a verbatim, typewritten record of the hearing;

(ii) all exhibits offered into evidence;

(iii) proposed findings of fact, conclusions of law, and decision;

(iv) findings of fact, conclusions of law, decision, and notice of opportunity for administrative appeal;

(v) notice of appeal; and,

(vi) all other notices, motions, memoranda and orders.

(History: Sec. 75-7802, R.C.M. 1947; IMP Sec. 75-7802, R.C.M. 1947; EMERG NEW, Eff. 5/15/78)

48-2.18(42)-P18760. ADMINISTRATIVE APPEAL. (1) Scope. An impartial hearing officer shall conduct an impartial review of hearings on appeals from decisions in special education controversies heard pursuant to the provisions of Rule 48-2.18(42)-P18750.

(2) Impartial Review. The hearing officer conducting the review of the hearing shall:

(a) examine the entire hearing record;

(b) insure that the procedures at the hearing were consistent with the requirements of due process;

(c) seek additional evidence if necessary, and if by hearing, the hearing shall be conducted in accordance with Rule 48-2.18(42)-P18750 (6), (7) and (8), at a time and place which is reasonably convenient to the parent and child;

(d) afford the parties an opportunity for oral or written argument, or both, at the discretion of the hearing officer;

(e) on completion of the review, make an independent decision written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so; and

(f) not later than 30 days after the Superintendent

should be crossed off.

(c) If, despite all efforts to arrive at a mutual choice, parties cannot agree upon a hearing officer, the Superintendent of Public Instruction will make an appointment, but in no case will a hearing officer whose name was crossed out by any party be so appointed.

(4) Notwithstanding the foregoing provisions, the parties can mutually select the hearing officer.

(5) (a) A hearing may not be conducted or reviewed by a person who is an employee of a school district or other public agency which is involved in the education or care of the child, or who has a personal or professional interest which would conflict with his or her objectivity in the conduct or review of the hearing.

(b) A person who otherwise qualifies to conduct or review a hearing under paragraph (a) of this sub-section is not an employee solely because he or she is paid by the school district or other public agency to serve as a hearing officer. (History: Sec. 75-7802, R.C.M. 1947; IMP Sec. 75-7802, R.C.M. 1947; EMERG NEW, Eff. 5/15/78)

Georgia Ruth Lee
Supt.

In the matter of the adoption of rules requiring Indian studies training for certified personnel teaching on or near an Indian reservation	))))	NOTICE OF ADOPTION OF RULES 48-2.54(1)-S5400 48-2.54(1)-S5410 48-2.54(1)-S5420 48-2.54(1)-S5430 48-2.54(1)-S5440 48-2.54(1)-S5450 48-2.54(1)-S5460

TO: All Interested Persons:

1. On December 23, 1977, the Board of Public Education published notice of a proposed adoption of rules requiring Indian studies training for certified personnel teaching on or near an Indian reservation at page 1141 of the 1977 Montana Administrative Register, issue number 12.

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

48-2.54(1)-S5400 ~~(1)~~ DEFINITIONS.

~~(a)~~ (1) Indian. For the purpose of the Indian Studies Law, "Indian" is defined as: "any individual who

~~1~~ (a) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendent, in the first or second degree, or any such member;

~~2~~ (b) is considered by the Secretary of the Interior to be an Indian for any purpose;

~~3~~ (c) is an Eskimo or Aleut or other Alaska Native; or

~~4~~ (d) is determined to be an Indian under regulations promulgated by the Commissioner of Education, after consultation with the National Advisory Council on Indian Education, which regulations shall further define the term "Indian" (from Title IV, Indian Education Act."

~~(b)~~ (2) American Indian Studies. "American Indian Studies" is defined as instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of America Indians, particularly Indian tribal groups in Montana.

48-2.54(1)-S5410 ~~(2)~~ APPLICABILITY. The mandate of Section 75-6131 applies to certified personnel in the following situations:

~~(a)~~ (1) School districts that lie wholly or partially within the confines of an Indian reservation. All schools in such districts are affected, provided the district has an enrollment of at least ten Indian children or the enrollment is comprised of at least 50 percent Indian children;

~~(b)~~ (2) School districts that adjoin (i.e., share a common border with) an Indian reservation. In such districts, only those schools that enroll at least ten Indian children or have an enrollment comprised of at least 50 percent Indian children are affected.

48-2.54(2)-S5420 ~~(3)~~ FULFILLING THE REQUIREMENT.
~~(a)~~ (1) Inservice training developed by the Superintendent of Public Instruction and implemented by the local board of trustees consisting of no less than 30 instructional contact hours and approximately two hours of additional study for each contact hour, containing the curriculum defined in the Indian Studies Law; or
~~(b)~~ (2) Inservice training developed by a local board of trustees containing the curriculum defined in the Indian Studies Law and consisting of no less than 30 instructional contact hours and approximately two hours additional study for each contact hour, subject to the approval of the Superintendent of Public Instruction~~;~~; or
~~(c)~~ (3) A formal course or combination of courses consisting of a minimum of 6 college quarter credits containing the curriculum requirements defined in the Indian Studies Law~~;~~; or
~~(d)~~ (4) A combination of inservice training and/or college courses consistent with curriculum defined in the Indian Studies Law and subject to approval by the Superintendent of Public Instruction.

48-2.54(2)-S5430 ~~(c)~~ CONTENT OF STUDIES. Inservice training and college courses intended to fulfill the Indian Studies requirement shall be developed with the advice and assistance of Indian people and shall contain, but not be limited to, the following:
~~(i)~~ (1) Cross-cultural awareness with emphasis on such issues as the definition of culture, social and personal value systems, the development of attitude, and the nature of prejudice;
~~(ii)~~ (2) General overview of Native American history and culture;
~~(iii)~~(3) Specific orientation to the history, traditions, beliefs, customs, and contemporary affairs of Montana Indian tribes;
~~(iv)~~ (4) Classroom techniques for teachers of Indian children.
~~(f)--Inservice-training-and-college-courses-intended-to-fulfill-the-Indian-Studies-requirement-shall-be-developed-with-the-advice-and-assistance-of-Indian-people.~~

48-2.54(2)-S5440 ~~(4)~~ RECORDING THE FULFILLMENT OF REQUIREMENT. Completion of the Indian Studies requirement shall

be recorded through one of the following:

~~(a)~~ (1) A transcript from a college or university which indicates completion of requirements for teacher candidates in Native American Studies;

~~(b)~~ (2) A letter or certificate from the board of trustees of the school district to the participant certifying completion of an inservice training program developed by the Superintendent of Public Instruction and offered in conjunction with the local board of trustees;

~~(c)~~ (3) A letter or certificate from the board of trustees of the school district to the participant certifying completion of a locally-developed, state-approved inservice training program. Districts sponsoring inservice training shall submit lists of participants to the Division of Teacher Education and Certification in the Office of Public Instruction where permanent records are maintained.

48-2.54(2)-S5450 ~~(5)~~ MONITORING. For monitoring purposes, compliance with the Indian Studies requirement shall be recorded in the fall trustees' report.

48-2.54(2)-S5460 ~~(6)~~ GRACE PERIOD.

(1) A grace period shall be allowed for certified personnel who have not previously been required to comply with the Indian Studies requirement prior to their employment in an affected school district.

(a) ~~Such grace period shall be of a six (6) month duration commencing with the first date for which compensation is paid.~~ Within six months after the first date for which compensation is paid, the school district shall submit evidence to the Office of Public Instruction that all affected personnel are involved in a program intended to meet the Indian Studies requirement. Within one year after the first date for which compensation is paid, all affected personnel shall have completed the Indian Studies requirement described in 48-2.54(2)-S5420 ~~(3)~~ above, and the school district shall submit evidence of such completion to the Office of Public Instruction when completion is accomplished.

(b) ~~The school district shall submit evidence of completion of the Indian Studies requirement to the Office of Public Instruction at the end of said grace period.~~ Any school on or near a reservation that has not previously enrolled ten Indian students and was not affected on July 1, 1979 by the Indian Studies requirement shall also be allowed the six months' grace period if a total of ten or more Indian children enroll in the school at a later date.

3. At the public hearing fifty-five persons testified in favor of the proposed rule, twelve testified in opposition, and

ten testified as neither for nor against at both the hearing and in the written record. A variety of objections to the rule were voiced by opponents. The following is a compilation of those objections and the Board's reasons for overruling them.

(1) OBJECTION: "The rule is arbitrary."
Response: This allegation is too general to allow a specific response, but it should be pointed out that the rule implements a law and many of the objections to the rule are, in fact, objections to the law. This Board has no control over the content of the law.

(2) OBJECTION: "Rule goes beyond the intent of the law."
Response: The law specifically provides that schools located on or in the vicinity of Indian reservations shall employ only those certified personnel who have satisfied the Indian studies requirement. That requirement is defined to include a formal course of study offered by a unit of higher education or in-service training. The Board rule has simply provided the details for the implementation of the law.

(3) OBJECTION: "All teachers should be required to have Indian studies."
Response: The law clearly applies only to certified personnel in public schools located on or in the vicinity of Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs. Section 75-6132, R.C.M. 1947, does encourage other schools to meet the requirements of the Indian studies law, but it is clear that the legislature did not intend to require that.

(4) OBJECTION: "Board should require Indian studies for teacher certification."
Response: This is an entirely separate issue and is not relevant to the matter of the Board policy pursuant to law. Nonetheless, it is true that the Board could make Indian studies a certification requirement. The Board has opted not to do that at this time, partially because the Board of Regents now requires six credits of Indian studies for graduation.

(5) OBJECTION: "University system unwilling to accept certain Indian studies courses which were completed in the past."
Response: The university system has discretion in this area and this is beyond the control of the Board. The Board has the responsibility of implementing the law.

(6) OBJECTION: "It is unclear which teachers are affected by the rule."
Response: The law and the rule are perfectly clear. The Office of Public Instruction has identified those school districts which are affected; all certified personnel, including tenured personnel, in those districts are affected. Section 2 of the rule, "Applicability," fully explicates which teachers are affected.

(7) OBJECTION: "Six credit hours of university study is excessive."

Response: The history, traditions, values, customs, beliefs, ethics and contemporary attitudes of Montana's Indians are sufficiently complex to require more than superficial treatment. That is why the Indian Culture Master Plan, adopted by the State Board of Education in 1975, suggested six credits of study and that is why six hours are specified in the rule.

(8) OBJECTION: "Local trustees should be able to decide whether or not a teacher has complied with law."
Response: The Board feels that some uniformity in the requirement is desirable, but the rule also leaves considerable discretion at the local level in designing their inservice training courses.

(9) OBJECTION: "Six-month grace period not long enough."
Response: Since the proposed rule was published, the Board has amended the section on the grace period. The rule now provides that efforts at complying with the rule must begin within six months and must be completed within one year.

(10) OBJECTION: "Presently certified teachers should be exempt from the requirement."
Response: The Board is bound by the October 11, 1977 ruling of the Attorney General which held that the provisions of the Indian Studies Act apply to tenured teachers.

(11) OBJECTION: "It is unfair to require compliance on basis of head count of Indian children."
Response: The law is clear on which schools are affected. (See objection no. 6.)

(12) OBJECTION: "The July 1, 1979 compliance deadline is too early."
Response: The date was established by law, not by Board policy. It should also be noted that law has been in effect for several years; everyone knew the deadline was 1979; inservice guidelines for credit have been in effect since March 1976; there is still ample time for compliance.

(13) OBJECTION: "Wording of rule unclear as to how grace period applies to schools not presently affected but which may be affected in future."
Response: Rule has been amended since it was first proposed to correct this defect. (See 48-2.54(2)-S5460.)

Earl J. Barlow

CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State May 15, 1978.

VOLUME 37 OPINION NO. 130

COUNTIES - Notice requirement for road abandonment by county commissioners; effect of invalid notice;
COUNTY COMMISSIONERS - Notice requirement for road abandonment by county commissioners; effect of invalid notice;
SECTIONS - 32-4001, 32-4014, R.C.M. 1947.

HELD: 1. County commissioners have no authority to vacate a previous road abandonment on their own initiative.

2. The notice required prior to the abandonment of a county road requires actual notice to all landowners of record affected thereby.

3. An abandonment order is effective only as to interested parties properly notified.

13 April 1978

Margaret A. Tonon
Deputy County Attorney
115 Bedford
Hamilton, Montana 59840

Dear Ms. Tonon:

You have requested my opinion concerning a road closure by the Ravalli County Commissioners. The facts surrounding this closure were as follows:

In January of 1976 the Commissioners were petitioned by twenty-one landowners to hold a public hearing for a road abandonment. The petition was accepted by the Commissioners, notice of the hearing was sent to the names appearing on the petition and published in the local newspaper on February 9, 16, and 23 of 1976. On February 25, 1976 a hearing was held at the courthouse and the Commissioners decided to abandon the road as asked in the petition.

On May 24, 1976, the Commissioners were contacted by an attorney representing a landowner in the area affected by the abandonment requesting the Commissioners to reverse their ruling or hold a new hearing on the petition for abandonment.

The Commissioners vacated their prior abandonment order, held a new hearing, and then signed a new order abandoning the road, with the exception of one section of road which was objected to by the one landowner.

You have asked two questions:

1. Whether the Commissioners had or do now have the authority to vacate a previous road abandonment order on their own initiative?

2. If so, do the Commissioners also have the authority to hold a subsequent public hearing on their own initiative to reconsider the petition for abandonment?

Both of your questions are answered by Section 32-4001, R.C.M. 1947, which specifically limits the authority of the Board of County Commissioners in this area, by providing:

> (1) Each board shall acquire rights of way for county roads and discontinue or abandon them only upon proper petition therefor. (Emphasis supplied.)

The Board has no authority to act on its own initiative as to opening or abandoning a county road.

Two other questions, however, arise under these circumstances:

1. Whether the objecting landowner was given proper notice of the abandonment proceeding?

2. If not, what effect does this lack of notice have on the proceedings?

Section 32-4014 provides that no abandonment order shall be valid unless preceded by notice and public hearing. In the instant case, the Board gave actual notice to the persons signing the petition and also published notice in the local newspaper. However, the objecting landowner was never given actual notice.

Proper notice of the abandonment proceeding was not given to the objecting landowner, assuming he was an owner of record. The United States Supreme Court has held that notice by newspaper publication of the pendency of a proceeding which

will affect an interest in real property is not sufficient as to a person whose name and address are known or are very easily ascertainable. Schroeder v. New York City, 371 U.S. 208, 9 L.Ed. 2d 255, 83 S.Ct. 279 (1962); Walker v. Hutchinson, 352 U.S. 112, 1 L.Ed.2d 178, 77 S.Ct. 200 (1956). The court stated in Schroeder at p. 211:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

When a county road is being considered for abandonment the interested parties would certainly include the landowners affected thereby. Further, the names and addresses of landowners of record are ascertainable from the county assessor. Under these circumstances, the notice by publication in the newspaper was not effective as to any landowner of record affected by the abandonment of the county road. As stated in Schroeder at p. 213:

> Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.

The final question is what effect the lack of notice to one landowner had on the Board's abandonment of the county road. The Montana Supreme Court has addressed this situation in Shaw v. City of Kalispell, 135 Mont. 284, 340 P.2d 523 (1959). The court in Shaw was primarily concerned with whether a landowner properly notified could take advantage of the failure of notice to other parties who had neither protested nor appeared as parties, however, citing with approval authority from other jurisdictions, the court stated at p. 292:

> The fact that one or more landowners was not notified will not vitiate the proceedings as to those who were properly notified.
>
> * * *
>
> Where notice is required, it is essential to confer jurisdiction, for without some notice there is no jurisdiction, and the proceedings are void. It is not, however, to be understood that where there is jurisdiction of the subject matter, and

> there are many persons interested as owners of different parcels of land, failure to give notice to some of the property owners will vitiate the entire proceeding. In such cases the better opinion is that the proceeding is void only as to those who have not been notified, but valid as to those who have had notice.

Therefore, the Board, in effect, reached the proper solution to the problem by invalidating the abandonment as to the landowner objecting to lack of notice. The second hearing, however, was unnecessary and outside the Board's authority. The original order of abandonment must stand and will be effective only as to those interested parties properly notified.

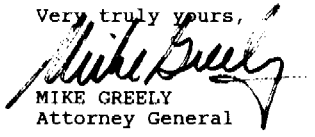
THEREFORE, IT IS MY OPINION:

1. County commissioners have no authority to vacate a previous road abandonment on their own initiative.

2. The notice required prior to the abandonment of a county road requires actual notice to all landowners of record affected thereby.

3. An abandonment order is effective only as to interested parties properly notified.

Very truly yours,



MIKE GREELY
Attorney General

MG/RA/br

VOLUME 37 OPINION NO. 131

CONSERVATION DISTRICTS - Election of conservation district supervisors; non-partisan designation; necessity of separate ballots; residence requirement; filing fees.
ELECTIONS - Election of conservation district supervisors; non-partisan designation; necessity of separate ballots; residence requirement; filing fees.
SECTION - 76-106, R.C.M. 1947.

HELD: (1) There are no partisan designations in a conservation district supervisor election.

(2) A separate ballot is necessary if the nominating election is held in conjunction with the state primary election. A separate ballot would also be necessary in a general election if the registrar determines that within his jurisdiction some of the qualified electors in the general election are ineligible to vote in the supervisor election.

(3) A supervisor must reside in the district wherein he is nominated and elected.

(4) Filing fees are not required for election to the office of conservation district supervisor.

14 April 1978

Douglas G. Harkin
Ravalli County Attorney
115 Bedford
Hamilton, Montana 59840

Dear Mr. Harkin:

You have requested my opinion concerning the election of conservation district supervisors. The specific questions presented are:

1. Are there any partisan designation requirements?

2. Is a separate ballot necessary?

3. Must a supervisor reside in the district from which he is elected?

4. Are filing fees required?

Section 76-106, R.C.M. 1947, which governs the election of conservation district supervisors, provides:

> (1) Within 30 days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the registrar, as defined in Title 23, R.C.M. 1947, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or supervisor areas thereof, wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor. If more than six candidates are nominated, the registrar shall give due notice of a nominating election to be held for the selection of six candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election. In the general election, the names of all persons nominated by petition (if six or fewer) or by election shall be printed, arranged in a rotating order of surnames, as provided under 23-3511, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the voter's preference. All qualified electors within the district are eligible to vote in the election. The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district. The registrar in each county shall prepare suitable nonpartisan ballots and polling lists for the election of supervisors, which ballots and polling lists shall be delivered to the election judges in those precincts which contain eligible voters prior to each general election and each primary election in which more than four candidates are nominated. The election judges, clerks, and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election and

> tabulate the results of such election in the manner provided for by the general election laws of the state.
>
> (2) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections. Nominations for the election of supervisors shall be made as provided under subsection (1) except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.

The answers to your first three questions are found within Section 76-106, R.C.M. 1947. The Montana Supreme Court has repeatedly held that the intention of the legislation must first be determined from the plain meaning of the words used, and if the interpretation of the statute can be so determined, the courts will go no further. Matter of Baier's Estate, ___ Mont. ___, 567 P.2d 943 (1977); Coxgrove v. Industrial Indem. Co., ___ Mont. ___, 552 P.2d 622 (1976); Security Bank and Trust Co., v. Connors, ___ Mont. ___, 550 P.2d 1313 (1976). The eighth sentence of 76-106(1), R.C.M. 1947, answers your first question by stating:

> The registrar in each county shall prepare suitable nonpartisan ballots and polling lists for the election of supervisors, which ballots and polling lists shall be delivered to the election judge in those precincts which contain eligible voters prior to each general election and each primary election in which more than four candidates are nominated. (Emphasis added).

The legislature clearly intended that this election be nonpartisan. Therefore, there are no partisan designation requirements.

As for your second question, there are two situations wherein a separate ballot would be required for the supervisor election. The first situation is when the nominating election is held in conjunction with the state primary election. Section 23-3308(1) requires a ballot for each political party entitled to participate in the primary

election. The supervisor election, being nonpartisan, could not be included on any party ballot and, consequently, would require a separate ballot.

The second situation in which a separate ballot would be necessary is when a qualified elector in the general election could conceivably be ineligible to participate in the conservation district supervisor election. For instance, a conservation district may exclude areas within the city limits. As a result qualified electors for the general election residing within the city would be ineligible to participate in the supervisor election. The registrar would be required to prepare separate ballots for the supervisor election if this possibility exists within his or her jurisdiction.

As for your third question concerning the residency of supervisors, subsection (2) of 76-106 provides in part:

> Nominations for the election of supervisors shall be made as provided under subsection (1) except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected. (Emphasis supplied).

Subsection (1), in turn states:

> A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or supervisor areas thereof, wherein the nominee resides. (Emphasis supplied)

In order to be elected one must be nominated for the position, and that nomination must come from the district, or supervisor areas thereof, wherein he resides. Therefore, a conservation district supervisor must reside in the district wherein he is seeking election.

Your final question is whether filing fees are mandatory in the election of conservation district supervisors. Section 76-106, R.C.M. 1947 does not call for any filing fees. Nor does Section 23-3304, R.C.M. 1947, which requires filing fees for offices receiving compensation in the form of salaries or fees, and for the office of county commissioner. The office of conservation district supervisor does not fall within any of these catagories, since a supervisor

does not receive any compensation, but is merely reimbursed for expenses. Section 76-107(4), R.C.M. 1947.

THEREFORE IT IS MY OPINION:

(1) There are no partisan designations in a conservation district supervisor election.

(2) A separate ballot is necessary if the nominating election is held in conjunction with the state primary election. A separate ballot would also be necessary in a general election if the registrar determines that within his jurisdiction some of the qualified electors in the general election are ineligible to vote in the supervisor election.

(3) A supervisor must reside in the district wherein he is nominated and elected.

(4) Filing fees are not required for election to the office of conservation district supervisor.

Very truly yours,

MIKE GREELY
Attorney General

MG/RA/ar

VOLUME NO. 37 OPINION NO. 132

SCHOOLS - Quarantines, Department of Health and Environmental Sciences;
HEALTH - Public Schools, Quarantines, Department of Health and Environmental Sciences;
SECTION - 69-4112, R.C.M. 1947.

HELD: The Department of Health and Environmental Sciences has the power under Section 69-4112 to stem the outbreak of communicable disease by imposing a quarantine on a particular school.

14 April, 1978

Sandra R. Muckelston, Esq.
Legal Division
Department of Health &
Environmental Science
1400 Eleventh Avenue
Helena, Montana 59601

Dear Ms. Muckelston:

You have requested my opinion on the following question:

> Does the Department of Health and Environmental Sciences have the power to limit attendance at a particular school to immunized persons in order to curtail the outbreak of a communicable disease?

Section 69-4112 provides:

> Quarantine measures - adoption and enforcement. The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). Receipts from fines shall be deposited in the state general fund.

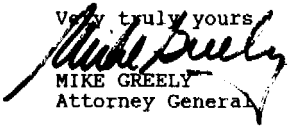
This section clearly gives the Department broad powers to adopt whatever reasonable quarantine measures are necessary to prevent the spread of communicable disease. The Department's power clearly extends to the geographic area of the state, or a county or municipality. If restriction of the quarantine to a particular school, rather than an entire

county or municipality, will accomplish that purpose, such a restriction is proper. Section 69-4112, R.C.M. 1947, cannot be read to require a quarantine against an entire county or municipality if a more restricted approach will accomplish the statutory purpose.

THEREFORE, IT IS MY OPINION:

The Department of Health and Environmental Sciences has the power under Section 69-4112 to stem the outbreak of communicable disease by imposing a quarantine on a particular school.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 133

CONTRACTS - School board's delegation of hiring and firing power;
EMPLOYMENT - School board's delegation of power to employ principals;
SCHOOL BOARDS - Delegation to district superintendent of hiring and firing power;
SCHOOL DISTRICTS - Superintendent's power to hire and fire principals;
SECTION - 75-5933(1), R.C.M. 1947;
Art. X, §8, 1972 Montana Constitution;

HELD: A school district board of trustees may not delegate its duty to employ or dismiss principals and vice-principals to the school district superintendent.

14 April 1978

Mr. Rae V. Kalbfleisch
Toole County Attorney
Toole County Courthouse
Shelby, Montana 59474

Dear Mr. Kalbfleisch:

You have asked my opinion on this question:

> May a school district board of trustees, in a contract with the school district superintendent, delegate authority to the superintendent to hire and fire all school principals and vice-principals without the approval or rejection of the board, and provide that no person so fired may hold an administrative position in the school system for five years?

My opinion is that a school board may not bargain away its duties in this manner.

In Wibaux Education Association v. Wibaux County High School, ___ Mont. ___, 573 P.2d 1162 (1978), the Montana Supreme Court addressed the similar issue of whether a school board could provide by contract that a decision to terminate a teacher's services be subject to arbitration. The Court said:

The hiring and nonrenewal of teachers in Montana is recognized as a function that belongs to the school boards. School boards have constitutional status under Article X, Section 8, 1972 Montana Constitution, which provides:

> "The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law."

At the time the agreement here was negotiated the legislature had given school boards the exclusive right to hire and terminate teachers. Chapter 59, Title 75 covered the powers and duties of school boards. Section 75-5933, R.C.M. 1947, provided in relevant part:

> "As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be its duty to perform the following duties or acts:
>
> (1) employ or dismiss a teacher, principal or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of the school personnel chapter of this title ***." (Emphasis added.)
>
> ***
>
> It is clear...that [the power of nonrenewal of a teacher's contract] was given only to the School Board. 573 P.2d at 1164-65.

The court found in Wibaux that this statutory provision, and another one that is no longer in effect each indicated that arbitration of the nonrenewal of nontenured teachers was not allowed by law.

The portion of §75-5933 cited above, which is still the law in Montana, also makes clear that only a school board has the power to hire or fire principals and vice-principals.

The only power specifically given the district superintendent by the statute is to make hiring and firing recommendations to the school board.

Both of the contractual provisions you have asked about involve a delegation of the school board's power to make the final employment and dismissal decisions. The first provision directly delegates that power to the district superintendent on a case-by-case basis. The second also effectively delegates that power. The district superintendent, in deciding to fire a principal or vice-principal, decides at the same time not to hire that person for a period of five years. The issue you have raised, then, is whether the school board's power to hire and fire may be delegated to the district superintendent.

In Big Sandy School District No. 100-J v. Carroll, 164 Colo. 173, 433 P.2d 325 (1967), the Colorado Supreme Court was presented with a similar issue involving a similar statute. The issue was "whether a school board may delegate to its superintendent of schools the 'power' and 'duty' to employ teachers." 433 P.2d at 326. The statute, CRS 1963, 123-10-19, said: "(1) every school board, unless otherwise especially provided by law, shall have power, and it shall be their duty: (2) to employ or discharge teachers..." Id. The court found that this power and duty was non-delegable, and gave the following explanation for its decision:

> By way of background, the general rule is that a municipal corporation, or a quasi-municipal corporation such as the District, may delegate to subordinate officers and boards powers and functions which are ministerial or administrative in nature, where there is a fixed and certain standard or rule which leaves little or nothing to the judgment or discretion of the subordinate. However, legislative or judicial powers, involving judgment and discretion on the part of the municipal body, which have been vested by statute in a municipal corporation may not be delegated unless such has been expressly authorized by the legislature. See C.Rhyne, Municipal Law, 74, and E. McQuillan, Municipal Corporations, 845-49 (3d ed. 1966).
>
> In our view the power to employ teachers and fix their wages is not a mere ministerial or administrative matter, where little or no judgment or

discretion is involved, but on the contrary is a legislative or judicial power involving the exercise of considerable discretion. Hence, under the general rule, such power cannot be delegated. The power to employ teachers has been conferred by the legislature exclusively on the school board, and therefore it cannot be delegated. To hold to the contrary would thwart the obvious intent of the legislature and would amount to nothing more than pure judicial legislation.

For general background information as to the mode of employing school teachers, see 78 CJS Schools and School Districts §171, p.994, et seq. where the following appears:

> Only such persons as are authorized by the constitution or statute have power to appoint teachers, principals, and superintendents. Under various statutes this power is conferred on school boards, on boards of trustees of school districts or boards of directors of subdistricts, on boards of education of cities or counties, and on school committees.
> ***
> Some statutes confer on the designated officer or body exclusive power to appoint teachers and other school employees. Such power, when conferred on a particular body, cannot be delegated, and an applicant for appointment is chargeable with knowledge of such fact. Accordingly, the duty of the board to make the selection cannot be delegated to the superintendent, even though the statute makes it obligatory on the board to select teachers from nominations made by him. (Emphasis added.)

433 P.2d 328. See also University of Colorado v. Silverman ___ Colo. ___, 555 P.2d 1155 (1976); Bunger v. Iowa High School Athletic Association, ___ Iowa ___, 197 N.W.2d 555 (1972).

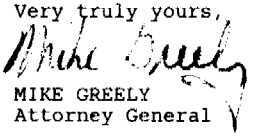
Montana follows the general rule that ministerial functions of a school board may be delegated to a district superintendent, while discretionary functions may not. Cf. School District No. 4 v. Colburg, ___ Mont. ___, 547 P.2d

84, 87 (1976). Colburg held that delivery of a statement of reasons for a teacher's termination was a ministerial action properly performed by the district superintendent. There is no doubt that the hiring and firing of principals and vice-principals are discretionary duties. Section 75-5933 states specifically that such a determination is in the trustees' "sole discretion."

THEREFORE IT IS MY OPINION:

A school district board of trustees may not delegate its duty to employ or dismiss principals and vice-principals to the school district superintendent.

Very truly yours,



MIKE GREELY
Attorney General

MG/SS/ar

VOLUME 37 OPINION NO. 134

COUNTY CLERK AND RECORDER - Duties, joint tenancies;
COUNTY CLERK AND RECORDER - Fees;
FEES - County Clerk, joint tenancy terminations;
SECTIONS 16-2905, 16-2905(1), (2), 25-231(5), 91-4321.1(1), (2), (3), (4), (5), (6), 91-4469, 91A-3-1205, 91-4470, 91-4470(2), 91-4471, 91-4471(1)(a), 91-4471(2), 91-4472, 91-4473

HELD: 1. Clerk and recorders are not required to issue "transfers of title."

2. Upon filing of the application and certificates (form INH-3), the clerk should index the transfer in the grantor and grantee index, noting the time and place of filing. The proper filing fee for form INH-3 is three dollars ($3.00).

17 April 1978

James E. Seykora
Big Horn County Attorney
P. O. Box 551
Hardin, Montana

Harold Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Richard P. Heinz
Lake County Attorney
Polson, Montana 59860

Gentlemen:

You have requested my opinion on the following questions:

> Are county clerk and recorders required to issue a transfer of title to a surviving joint tenant? If not, what procedures should clerk and recorders follow?

Section 91-4321.1, R.C.M. 1947 (repealed by Laws of Montana (1977), ch. 409, sec. 5) provided an expedited procedure for proving title to joint tenancy property owned by husband and

wife after the death of one of the spouses. The surviving spouse filed proof of death, a list and valuation of joint tenancy property, and proof of creation of the joint tenancy with the Department of Revenue. Section 91-4321.1(2), (3), (4), and (5). The Department of Revenue then determined the inheritance tax due. If no tax were due, or if due, after its payment, the county clerk and recorder issued a "transfer of title" for any real property involved to the surviving spouse. Section 91-4321.1(6). The completed transfer of title form prescribed by the Department of Revenue was filed and recorded in the book of deeds and indexed in the grantor and grantees indexes, thereby preserving a record chain of title.

The statute provided that title to the joint tenancy property vested in the surviving spouse "provided the requirements of this section have been complied with." Section 91-4321.1(1). Because this subsection appeared to place conditions on vesting, it potentially ran afoul the federal estate tax marital deduction. 37 Mont.L.Rev. 131, 132 (1976). The 1977 legislature responded by repealing §§91-4321.1, 91-4469, and 91A-3-1205, (similar provisions dealing with joint tenancy property held by unmarried persons and estates requiring administration). Laws of Montana (1977), ch. 409, sec. 5. Enacted in their stead were §§91-4470 to 4473 which provide a procedure applicable to all joint tenancy property without regard to the relationship of the joint tenants or administration requirements.

Section 91-4470 requires the surviving joint tenant to file with the Department of Revenue a copy of the death certificate, a verified application for determination of inheritance tax, and evidence of the instruments creating the joint tenancy if required by the Department. Section 91-4470(2). The Department of Revenue determines the inheritance tax due, if any, and issues a certificate showing this information. Section 91-4470. The certificate and an acknowledgement by the county treasurer that the tax was paid are incorporated in the body of the application form prescribed by the Department of Revenue (Form INH-3).

If an interest in real property is involved, the surviving joint tenant must file a certified copy of the application with the clerk and recorder of the county or counties where the property is located. Section 91-4471(1)(a). This section also requires the filing of the revenue certificate of tax due and the county treasurer's receipt showing payment, §91-4471(1). Because both are incorporated in the

application form, however, in reality only one form is filed. The filing of this document "constitutes release of any lien for inheritance taxes." Section 91-4471.

The question as to issuance of a "transfer of title" arises because the Department of Revenue determined that clerk and recorders should continue to issue these documents. A review of the legislative history of these sections indicates this was not the legislature's intention.

The current law was enacted by House Bill 492. As originally introduced, it required the clerk and recorder to "terminate the joint tenancy or otherwise transfer the ownership." H.B. 492, sec. 2(2). The Senate Committee on Judiciary, to whom the bill was referred after passage by the House, recommended several amendments. These included striking the above language and inserting instead: "The interest of the decedent in property held in joint tenancy terminates upon his death." STANDING COMMITTEE REPORT, Senate Committee on Judiciary, 1977 Senate Journal 922. The bill as ultimately passed incorporated this amendment. Section 91-4471(2).

The amendment is consistent with common law concepts of joint tenancy property:

> [A] characteristic of joint tenancy property is that it is not testamentary but "is a present estate in which both joint tenants are seized in the case of real estate, and [are in] possession in the case of personal property, per my et tout," that is, such joint tenant is seized by the half as well as the whole. The right of survivorship in a joint tenancy therefore does not pass anything from the deceased to the surviving joint tenant. Inasmuch as both co-tenants in a joint tenancy are possessors and owners per tout, i.e., of the whole, the title of the first joint tenant who dies merely terminates and the survivor continues to possess and own the whole of the estate as before. The interest of the other co-tenant terminated by death transfers nothing, but his interest is merely divested by "its own inherent nature and limitation." Strout v. Burgess, 144 Me. 263, 68 A.2d 241, 12 ALR2d 939.

Kleemann v. Sheridan, 256 P.2d 553, 555 (Ariz. 1953).

Requiring clerk and recorders to issue documents purporting to transfer actual title is inconsistent with the legislature's recognition of the common law attributes of joint tenancy property. It is also inconsistent with repeal of §91-4321.1 and the senate amendments to House Bill 492 previously noted. Therefore it is my opinion that clerk and recorders are not required to issue "transfers of title."

Your second question concerns the clerk and recorders' role in terminating joint tenancies. Section 91-4472(1) requires applicants to file a certified copy of the application with the clerk and recorder. It is silent about the clerks' duties following filing. The statute does not specify how or where the documents are to be filed or indexed nor does it specify whether the clerk is to collect normal filing fees.

Section 16-2905 enumerates the indexes each county clerk must keep. Transfers of real estate are indexed in the grantor and grantee indexes. Section 16-2905(1), (2). Terminations of joint tenancies have historically been indexed in the grantor and grantee indexes because they involve a transfer in the sense that a deceased joint tenant is divested of his interest at death. Unlike transfers by deed, the event of death, rather than a written instrument, operates to effect the "transfer" of a deceased joint tenant's interest. Under prior law, the fact of death was acknowledged by an instrument which was recorded, either a court order to that effect, §91-4321 (repealed by Laws of Montana (1974), ch. 365, §2), the decree of distribution or more recently, the "transfer of title." Section 91-4471(1) does not require that the application and certificates be recorded. However, these instruments when filed establish a transfer of real estate and the grantor and grantee indexes remain the appropriate indexes. The date of "transfer" is the date of death. That part of the index which refers to the place of recording is inapplicable. Recording is unnecessary because the clerk retains the certified copy of the various documents. The clerk, however, should note in this column the date and place of filing.

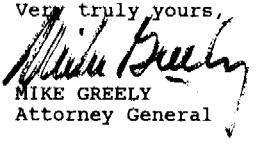
Section 25-231 enumerates fees the county clerk and recorders must charge. Subsection 5 states that the fee "[f]or filing and indexing each...instrument required by law to be filed and indexed..." is one dollar. The proper filing fee for form INH-3 is therefore $3.00 because although the three instruments required by law to be filed are incorporated into a single integrated document, §91-4471(1) treats them as separate documents for filing purpose.

THEREFORE, IT IS MY OPINION:

1. Clerk and recorders are not required to issue "transfers of title."

2. Upon filing of the application and certificates (form INH-3), the clerk should index the transfer in the grantor and grantee index, noting the time and place of filing. The proper filing fee for form INH-3 is three dollars ($3.00).

Very truly yours,



MIKE GREELY
Attorney General

BG/so

VOLUME 37 OPINION NO. 135

ATTORNEY GENERAL - When Attorney General opinion is inappropriate.
CLAIMS - Time and method of presenting claims against a decedent's estate;
COURTS - When court determination of questions submitted by State Agency to Attorney General is appropriate;
DEATH - Time and method of presenting claims against a decedent's estate;
INHERITANCE - Administration of estates; time and method of presenting claims;
STATE AGENCIES - Presentment of claims by State Agency against a decedent's estate;
SECTIONS - 91A-3-104, 91A-3-108, 91A-3-203(1), 91A-3-204, 91A-3-803(1), and 91A-3-804 to 91A-3-813, R.C.M. 1947.

HELD: Whether district court clerk must accept for filing creditor's claims against a decedent prior to appointment of a personal representative for the estate and whether such filing interrupts and tolls the three year limitation on presentment of claims of Section 91A-3-803(1)(b), or any shorter applicable statute of limitation, are inappropriate questions for an Attorney General opinion. The answers to these questions are unclear and an opinion regarding district court clerks to file such claims and holding that such filing tolls applicable time limitations for presentment and enforcement of creditor's claims against decedents would not protect the Department's claims if a court reached a contrary conclusion. These questions must be answered by the district court and, ultimately, the Montana Supreme Court. Until a Supreme Court determination is secured, the Department should assume for protection of the State's claims that any claim it has against a decedent will be barred three years after death, or other shorter time specified by any other applicable statute of limitation, if no personal representative is appointed.

17 April 1978

Mr. Thomas H. Mahan
Office of Legal Affairs
Department of Social & Rehabilition Services
Room 301, SRS Building
111 Sanders
Helena, Montana 59601

Dear Mr. Mahan:

You have requested my opinion on behalf of the Department of Social and Rehabilitation Services concerning the following questions:

1. Does Section 91A-3-804(1), R.C.M. 1947, require a district court clerk to accept and file a creditor's claim against a decedent's estate when no informal or formal probate or appointment proceeding has been commenced.

2. If so, does the filing of a creditor's claim with the district court toll the limitations and non-claim provisions of Section 91A-3-803(1), or other applicable statutes of limitations, until such time as a personal representative is appointed?

The Department has claims against numerous individuals who die each year. The Montana Uniform Probate Code provides for a simple procedure for presentment of creditor's claims against estates of decedents. It requires that a personal representative be appointed to administer a decedent's estate as a prerequisite to enforcement of any claims against the estate. Section 91A-3-104, R.C.M. 1947. Once a representative has been appointed, claims may either be presented directly to that representative or filed with the clerk of the district court. Section 91A-3-804(1), R.C.M. 1947, provides in relevant part:

> Claims against a decedent's estate may be presented as follows:
> (1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. * * * (Emphasis supplied.)

This provision clearly permits filing of a creditor's claims once a personal representative has been appointed. The Department interprets the provisions as also permitting the filing of claims with the district court prior to appoint-

ment of a personal representative. However, some district court clerks disagree and have refused to accept written claims tendered by the Department for filing before appointment of a personal representative. This refusal gives rise to your first question.

Your first question is important only in the context of your second question. The Department's purpose in attempting to file claims against decedents prior to appointment of their personal representatives is to toll the general three year limitation on presentment of claims which is provided in Section 91A-3-803(1), R.C.M. 1947. That provision requires presentation of claims arising prior to a decedent's death within three years of death or within any shorter time provided by any other applicable statute of limitation, providing:

> (1) All claims against a decedent's estate with the exception of claims for taxes and claims founded on tort which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
>
> (a) within four (4) months after the date of the first publication of notice to creditors if notice is given in compliance with section 91A-3-801; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or
>
> (b) within three (3) years after the decedent's death, if notice to creditors has not been published. (Emphasis supplied.)

The Department does not question the application or effect of subsection (a). Its specific concern is with those estates for which personal representatives have not been appointed, where the three year limitation specified under subsection (1)(b), or other shorter, applicable statute of limitations, continues to decay. The Department is not powerless in such cases, and may take affirmative action any time forty-five days after a decedent's death to enforce its

claims. After that time it may seek appointment of itself as personal representative if no other person with higher priority has sought and secured appointment, Section 91A-3-203(1), R.C.M. 1947, and proceed with the usual presentment and enforcement procedures prescribed in Sections 91A-3-804 to 91A-3-813, R.C.M. 1947. However, the Department considers this method of collection both costly and impractical, and takes the position that filing of a creditor's claim with the district court clerk, if permitted, is an alternative to securing the appointment of a personal representative. It submits that such filing interrupts and tolls the running of the three year limitation of Section 91A-3-803(1)(b), and any other applicable statutes of limitations. If the Department is correct in its position, it can obtain virtual immortality for claims against a decedent's estate by filing statements of its claims in the district court; nonclaim provisions and statutes of limitations would not begin running again until appointment of a personal representative.

It is doubtful that either the Uniform Probate Code draftsmen or the Montana legislature intended Section 91A-3-804(1) as a means of tolling the nonclaim provisions of Section 91A-3-803(1)(b), or other statutes of limitations, for estates for which personal representatives have not been appointed and thereby give a decedent's creditors a simple tool to extend the life of their claims indefinitely beyond three years after death. The three year limitation on claims is a common thread running through the provisions of the Uniform Probate Code. The Editorial Board comment to Section 91A-3-803, adopted as a part of the Montana Uniform Probate Code, states in part:

* * *

> The limitation stated in [subdivision (1)(b)] dovetails with the three year limitation provided in section [91A-3-108] to eliminate most questions of succession that are controlled by state law after three years from death have elapsed. Questions of interpretation of any will probated within such period, or of the identity of heirs in intestacy are not barred, however.

Similarly, the Comment to Section 91A-3-108 states in part:

> This section establishes a basic limitation period of three years within which it may be determined whether a decedent left a will and to commence administration of his estate. ***

* * *

All creditor's claims are barred after three years from death. See Section [91A-3-803(1)(b)]. (Emphasis supplied.)

* * *

The introductory comment to the chapter on Probate of Wills and Administration (Chapter 3) states in part:

* * *

(12) Statutes of limitation bar creditors of the decedent who fail to present claims within four months after legal advertising of administration and unsecured claims not previously barred by nonclaim statutes are barred after three years from the decedent's death.

One purpose of the three year limitation is to eliminate uncertainty concerning claims and disputes against a decedent's estate after three years whether or not a probate or administration proceeding has been brought. Mechanically the Code provides for appointment of a personal representative as a prerequisite to enforcement of any claims against an estate. Section 91A-3-104, R.C.M. 1947, provides in relevant part:

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. (Emphasis supplied.)

The Comment to this Section expressly mentions creditors' alternatives where other interested persons fail to seek appointment.

This and sections of Part 8 [Chapter 3], are designed to force creditors of decedents to assert their claims against duly appointed personal representatives. Creditors of a decedent are interested persons who may seek the appointment of a personal representative section [91A-3-301]. If no appointment is granted to another within 45 days after the decedent's death, a creditor may be eligible to be appointed if other persons with priority decline to serve or are ineligible (section [91A-3-203]). (Emphasis supplied.)

Finally, under Section 3-108 of the Uniform Probate Code, as adopted by the Commission on Uniform Laws, the ability to appoint a personal representative, with exceptions not relevant here, terminates three years after death, making it impossible for creditors to thereafter satisfy the appointment prerequisite to enforcing their claims. Section 91A-3-108, R.C.M. 1947, is the Montana counterpart, and provides in relevant part:

> No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three (3) years after the decedent's death, ***.
>
> * * *
>
> These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate, nor do they limit the right of interested persons to commence informal probate or appointment proceedings or formal testacy or appointment proceedings at any time after three (3) years from the decedent's death if there have been no previous formal or informal probate or appointment proceedings commenced in respect of that decedent. *** (Emphasis supplied.)

The underlined portion was added by the Montana Legislature and does not appear in the original Uniform Probate Code. Thus, while a personal representative cannot be appointed after three years under the Uniform Probate Code, under the Montana version it appears that there is no time limitation on appointment of a representative in any case where there has been no prior probate or appointment proceedings. The underlined language is inconsistent with the Code's overall purpose of finalizing all estate matters within three years of death and destroys the broad limitation the Code drafters provided in Uniform Probate Code Section 3-108. What affect, if any, this language has on the three year limitation for the presentment of claims is unclear. I am unable to determine with absolute certainty whether filing of a claim with the district court prior to appointment of a personal representative, if permitted under Section 91A-3-804(1), would toll the running of the period of limitations of Section 91A-3-803(1) or other statutes of limitations. Even if I were to determine that the limita-

tions are tolled by such filing, my determination would not protect the Department's claims if a court were to reach the contrary conclusion. An Attorney General's opinion is therefore inappropriate and I advise the Department to seek a district court and, ultimately, a Montana Supreme Court determination concerning these questions. In the meantime, or as an alternative to a court determination, the Department must assume that all claims will be barred three years after death, or after any shorter time provided by other applicable limitations, in those cases where personal representatives are not appointed. For all claims which may be collectible, the Department should petition for appointment of a representative within applicable periods of limitation if other persons fail to do so. This does not mean the Department must commence appointment proceedings on the forty-sixth day after death. It may wait for others to petition, so long as it does not wait until applicable limitations have run. It can protect its interests during any waiting period by demanding, pursuant to Section 91A-3-204, R.C.M. 1947, that it be notified of any proceedings filed in the district court.

THEREFORE, IT IS MY OPINION:

Whether district court clerks must accept for filing creditor's claims against a decedent prior to appointment of a personal representative for the estate and whether such filing interrupts and tolls the three year limitation on presentment of claims of Section 91A-3-803(1)(b), or any shorter applicable statute of limitation, are inappropriate questions for an Attorney General opinion. The answers to these questions are unclear and an opinion requiring district court clerks to file such claims and holding that such filing tolls applicable time limitations for presentment and enforcement of creditor's claims against decedents would not protect the Department's claims if a court reached a contrary conclusion. These questions must be answered by the district court and, ultimately, the Montana Supreme Court. Until a Supreme Court determination is secured, the Department should assume for protection of the State's claims that any claim it has against a decedent will be barred three years after death, or other shorter time specified by any other applicable statute of limitation, if no personal representative is appointed.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 136

FEES - Filing fees for defendants or respondents;
CLERKS - Clerk of Court, filing fees for defendants and respondents;
SECTION - 25-232, R.C.M. 1947.

HELD: The clerk of the district court must collect from each and every defendant or respondent a $10.00 fee on their initial appearance.

17 April, 1978

Gregory R. Todd
Deputy County Attorney
Gallatin County
P.O. Box 1049
Bozeman, Montana 59715

Dear Mr. Todd:

You have requested my opinion on the following question:

> What fees can a clerk of the district court charge to defendants or respondents under §25-232(1)(b) R.C.M. 1947?

Section 25-232, R.C.M. 1947 provides:

> (1) the clerk shall collect the following fees:
> (b) from each defendant or respondent, on his appearance, Ten Dollars;

Apparently a problem arises when an individual is charged as a defendant or respondent and also designated as a defendant or respondent doing business under a fictitous name; or when spouses are charged jointly.

However, the problem is answered by the language of the statute itself. The intent of the legislature must first be determined by the plain meaning of the words used in the statute, and when the statute can be so determined no other meanings of interpretation may be applied. Matter of Bier's Estate, ___ Mont. ___, 567 P.2d 943 (1977). Section 25-232(1)(b) requires each defendant or petitioner to pay a ten dollar fee when he makes his appearance. "Each" is synonymous with "every". State ex rel. Pierce v. Kundert, 90 N.W.2d 628, 630, 4 Wis.2d 392 (1958). Each defendant or

respondent who is in fact a separate entity and not a pseudonym for another defendant or respondent is required to pay the ten dollar fee.

THEREFORE, IT IS MY OPINION:

The clerk of the district court must collect from each and every defendant or respondent a $10.00 fee on their initial appearance.

Very truly yours,

MIKE GREELY
Attorney General

MG/DM/ar

VOLUME 37 OPINION NO. 137

CONSERVATION DISTRICTS - Candidates must run on at-large basis throughout entire district; number of candidates to be nominated for general election; determination of staggered terms;
ELECTIONS - Candidates must run on at-large basis throughout entire district; number of candidates to be nominated for general election; determination of staggered terms;
SECTION 76-106, R.C.M. 1947.

HELD:

1. The candidates for supervisor must run on an at-large basis throughout the entire district in both the nominating and general elections.

2. Each qualified elector may vote for ten (10) candidates in the nominating election and five (5) candidates in the general election when all five district supervisors will be elected.

3. Ten (10) candidates may be nominated to run in the general election wherein all five district supervisors will be elected.

4. A reasonable method of determining which three supervisors will receive the four-year terms must be decided upon by the registrar and made available to all candidates and qualified electors prior to the election.

19 April 1978

Richard Lewellyn, Esq.
Jefferson County Attorney
Jefferson County Courthouse
Boulder, Montana 59632

Dear Mr. Lewellyn:

You have requested my opinion concerning the election of conservation district supervisors. The specific questions presented in your request are as follows:

> 1) Whether the candidates for supervisor must run in the nominating election on an at-large basis throughout the entire district or only within a particular supervisor area?

2) Whether the candidates for supervisor must run in the general election on an at-large basis throughout the entire district or only within a particular supervisor area?

3) How many candidates may each qualified elector vote for in the nominating and general elections wherein all five district supervisors will be elected?

4) How many candidates will be nominated to run in the general election wherein all five district supervisors will be elected?

5) How is it to be determined which three supervisors will be elected to four-year terms and which two supervisors will be elected to two-year terms?

Section 76-106, R.C.M. 1947, governs the election of conservation district supervisors. The procedure set forth in Section 76-106 contemplates each district alternately electing three and two supervisors, respectively, at succeeding general elections. Subsection (1) of 76-106 provides the procedure for electing three (3) supervisors immediately following the establishment of the conservation district. Subsection (2) of 76-106 then requires each district to elect two supervisors in the second general election following organization to replace the two supervisors which are appointed by the department of natural resources and conservation upon creation of the district. As for existing conservation districts, Laws of Montana, Ch. 18, §4, (1977) reads:

> For the purposes of bringing existing districts into compliance with this act by the time of the 1978 general elections the terms of office for all supervisors shall expire upon passage and approval of this act. However, each supervisor shall remain in office until his successor has been elected and has qualified in accordance with this act. For purposes of the 1978 general election three supervisors shall be elected for a 4-year term and the remaining two supervisors elected for a 2-year term. No action or undertaking of a district may be invalidated or voided for failure to comply with the amendatory provisions of this act prior to January 1, 1979.

Your first two questions would be germane to any election of conservation district supervisors. Your last three questions are concerned with the election procedure for addressing existing conservation districts.

In answer to your first two questions, the legislature has not provided that the supervisors of any district should be elected according to supervisor areas. Section 76-106 states:

> Within 30 days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the registrar, as defined in Title 23, R.C.M. 1947, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or supervisor areas thereof, wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor. If more than six candidates are nominated, the registrar shall give due notice of a nominating election to be held for the selection of six candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election. In the general election, the names of all persons nominated by petition (if six or fewer) or by election shall be printed, arranged in a rotating order of the surnames, as provided under 23-351 upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the voter's preference. All qualified electors within the district are eligible to vote in the election. The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district. The registrar in each county shall prepare suitable nonpartisan ballots and polling lists for the election of supervisors, which ballots and polling lists shall be delivered to the election judges in those precincts which contain eligible voters prior to each general election and each primary election in which more than four candidates are

> nominated. The election judges, clerks, and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election and tabulate the results of such election in the manner provided for by the general election laws of the state.

The election procedure in 76-106 provides guidelines for a district-wide election and does not provide the necessary guidelines for an election in each supervisor area. When interpreting a statute the courts must ascertain what, in terms or in substance, is contained therein and not to insert that which has been omitted. Matter of Baier's Estate, ___ Mont. ___, 567 P.2d 943 (1977).

District supervisors must reside within the boundaries of the conservation district to be eligible for election. 37 OP. ATT'Y. GEN. NO. 131 (1977). However, there is no requirement that a supervisor be nominated and elected from the supervisor area in which he resides. Section 76-106(1) provides in part:

> A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or supervisor areas thereof, wherein the nominee resides.... (Emphasis added).

This part of §76-106 requires a supervisor to reside within the district wherein he or she is nominated. The underscored portion of the sentence does not require the supervisor to be nominated from the supervisor area where he resides. If that were the case, the phrase would read in the singular (e.g., or the supervisor area, wherein the nominee resides). This phrase is only intended to clarify the nominating procedure when the district is divided into supervisor areas by allowing ten persons within the district to nominate a candidate even though all ten persons may not reside within the same supervisor area, and cannot be relied upon for the proposition that supervisors must be nominated and elected according to the supervisor area wherein they reside.

In response to your third and fourth questions, 76-106 allows the nomination of six (6) candidates when three (3) supervisors are to be elected in the general election, and four (4) candidates when two (2) supervisors are to be elected. The legislature clearly intended to permit twice

the number of candidates as the number of offices to be filled in the general election. Therefore, each qualified elector may vote for a maximum of ten (10) candidates in the nominating election and five (5) candidates in the general election, and a maximum of ten (10) candidates may be nominated to run in the general election.

Your final question cannot be answered precisely. The legislature has required that three supervisors be elected for four-year terms and two supervisors be elected for two-year terms. The legislature failed to provide a method of determining which three supervisors receive the longer terms. Some suggestions for a reasonable method of determination are provided, but the ultimate decision is left to your discretion.

Perhaps the method provided in §16-5115.13 for the election of new officials under a new form local government could be used. This method would require the supervisors to draw lots to establish their respective term of office at the first meeting of the district.

Another suggestion is to award the four-year terms to the three supervisors receiving the most votes, with the remaining two supervisors filling the two-year terms.

Whatever method is adopted, all candidates and qualified electors should be apprised of the method to be employed prior to the election. The electors can be informed by a short explanation appearing on the ballot.

THEREFORE IT IS MY OPINION:

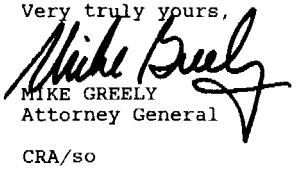
1. The candidates for supervisor must run on an at-large basis throughout the entire district in both the nominating and general elections.

2. Each qualified elector may vote for ten (10) candidates in the nominating election and five (5) candidates in the general election when all five district supervisors will be elected.

3. Ten (10) candidates may be nominated to run in the general election wherein all five district supervisors will be elected.

4. A reasonable method of determining which three supervisors will receive the four-year terms must be decided upon by the registrar and made available to all candidates and qualified electors prior to the election.

Very truly yours,



MIKE GREELY
Attorney General

CRA/so

VOLUME 37 OPINION NO. 138

PUBLIC OFFICERS - Local government contribution to group health insurance premiums;
LOCAL GOVERNMENT - Contribution to group health insurance of officers;
INSURANCE - Contribution of local government;
SECTION 11-1024, R.C.M. 1947.

HELD: 1. A local government unit is required, upon approval of two-thirds of its officers and employees, to contribute to the group health insurance plan of its officers.

2. A local government is not required to contribute a specific amount to the group insurance program of its officers.

21 April 1978

Theodore P. Cowan
Lewistown City Attorney
208 Bank Electric Building
Lewistown, Montana 59457

Dear Mr. Cowan:

You have requested my opinion on the following question:

> Was it the intent of the legislature in amending §11-1024, R.C.M. 1947 to exclude officers of local government units from receiving a local government contribution to their group health insurance plan?

Section 11-1024, R.C.M. 1947, was amended twice during the 1977 session of the legislature. Prior to amendment, the section read in pertinent part:

> Group Insurance for All Departments, Bureaus, Boards, Commissions and Agencies of the State of Montana, County, City and Town Officers and Employees--Authority--Approval of Employees--Limit on Contributions.
> (1) All departments, bureaus, boards, commissions and agencies of the State of Montana, and all counties, cities and towns shall...enter into...insurance contracts or plans for the benefit of their officers, employees and their

> dependents, and the respective administrative and governing bodies shall pay for such insurance ten dollars ($10.00) per month for each officer, employee, and legislator, and provided that for all employees defined in (2) of this section and for members of the legislature, such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred and twenty dollars ($120.00) per year.
>
> However, for employees of elementary and high school districts and of local government units, the employer's premium contribution may exceed but shall not be less than the amount specified in this section. [Emphasis supplied]

Laws of Montana (1977), ch. 259 rearranged §11-1024 but did not change the meaning of the prior law. The amendment still required the respective administrative and governing bodies to contribute ten dollars ($10.00) a month toward the insurance premium of each officer, employee and legislator.

Section 11-1024 was also amended by Laws of Montana (1977), ch. 563. These amendments increased the one hundred and twenty dollar ($120) limitation for employees in the executive and legislative branches of state government, and eliminated the above quoted language requiring a contribution of ten dollars ($10.00) per month for each officer, employee and legislator.

Since the amendments do not appear to conflict, the Code Commissioner made a composite section embodying the changes made in both amendments. Section 11-1024 as compiled reads in pertinent part:

> Group Insurance for Public Employees and Officers:
> (1) All...cities and towns shall, upon approval by two-thirds vote of the officers and employees... enter into group hospitalization, medical, health... insurance contracts or plans for the benefit of their officers, employees and their dependents. [Emphasis supplied]
> (2) (a) The respective administrative and governing bodies shall contribute the amount specified in this section towards the insurance premium. For employees defined in subsection (5) of this section, other than members of collective bargaining units, and for members of the legisla-

> ture, the employer contribution for insurance shall be $240 per year for the fiscal year ending June 30, 1978, and $360 per year for each fiscal year thereafter. The employer shall prorate this amount for employees who work less than 2,080 hours per year. For employees of elementary and high school and of local government units, the employer's premium contributions may exceed but shall not be less than $10 per month.
>
> (b) For state employee members of a collective bargaining unit, the employer shall pay the amount negotiated with the collective bargaining unit.

Although the specific language requiring the local government to contribute ten dollars ($10.00) each month for each officer, employee and legislator was repealed, it is clear the legislature did not intend to completely eliminate all government assistance. Section 11-1024 specifically requires a local government, upon approval of two-thirds of all it's officers and employees, to enter into contracts for the health insurance plan of its officers. On that point the statutory language is plain and unambiguous and there is nothing to construe. State ex rel. Huffman v. District Court, 154 Mont. 201, 461 P.2d 847 (1969).

By requiring the local government to enter into contracts did the legislature intend to require a contribution to the premium of each officer? It is my opinion that a contribution is required.

Clearly the purpose of the statute, both before and after amendment, is to provide health insurance programs for officers and employees of local government. A statute must not be interpreted to defeat its evident purpose, since objects sought to be legislatively achieved are of prime consideration. Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963). A reasonable interpretation would assume that the legislature still intended officers to be treated similarly to other employees. The legislature eliminated the specific amount of the government contribution, however it does not necessarily follow that it intended to change the tenor of the entire act. Statutes must be read and considered in their entirety; legislative intent may not be gained from a consideration of the whole. Teamsters' Local #45 v. Cascade County School District, 162 Mont. 277, 511 P.2d 339 (1973). The health insurance program for officers is referred to in various places throughout the act. The

heading refers to group insurance for public employees and officers. Headings can be used in resolving any ambiguity. Senate Bill No. 23 v. Lamoreaux, 168 Mont. 102, 540 P.2d 975 (1975). It is evident from a reading of the entire statute that the legislature did not intend to eliminate the contribution of the local government.

The legislature did eliminate the specific dollar amount of the local governments' contribution. It has long been held that the legislature does not intend useless acts. Any material change in the language of the original act is presumed to indicate a change in legal rights; a change in substance rather than form. Montana Milk Control Board v. Community Creamery, et al., 139 Mont. 523, 366 P.2d 151 (1961). No specific amount is required to be contributed by the local government. A reasonable interpretation would suggest that officers be treated the same as other employees.

THEREFORE, IT IS MY OPINION:

1. A local government unit is required, upon approval of two-thirds of its officers and employees, to contribute to the group health insurance plan of its officers.

2. A local government is not required to contribute a specific amount to the group insurance program of its officers.

Very truly yours,

MIKE GREELY
Attorney General

MMcG/so

VOLUME NO. 37 OPINION NO. 139

NOTE: This Opinion Replaces and Overrules 37 OP. ATT'Y GEN. NO. 108, Issued 27 January 1978;
MOTOR VEHICLES - Proper School District for Taxation;
PERSONAL PROPERTY - Proper School District for Taxation;
SCHOOL DISTRICTS - Proper School District for Taxation;
TAXATION AND REVENUE - Proper School District for Taxation;
SECTIONS 84-406 and 53-519, R.C.M. 1947; 1759.5 R.C.M. 1935.
ATTORNEY GENERAL'S OPINIONS - Vol. 36, No. 11 cited; Vol. 32, No. 15 and Vol. 37, No. 108 expressly overruled.

HELD: The proper situs for taxation of a motor vehicle is that school district wherein the owner makes his permanent residence at the time of registration.

21 April, 1978

Thomas Budewitz
Broadwater County Attorney
Townsend, Montana 59611

Dear Mr. Budewitz:

You have asked me to reconsider 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 user.

I have previously held, at 37 OP. ATT'Y GEN. NO.108, that the proper situs for taxation of a motor vehicle is the school district wherein the vehicle is habitually kept when at rest. In that opinion I relied on a holding by former Attorney General Anderson 32 OP. ATT'Y GEN. NO. 15, which in turn relied on the case of Valley County v. Thomas, 109 Mont. 345 (1939). In that case the Montana Supreme Court held that the county of situs of a motor vehicle for the purpose of licensing and taxation is the county which is the habitual situs when at rest as distinguished from its temporary situs or its situs of employment. Relying on the Valley County case by analogy, Attorney General Anderson held that "between school districts, vehicles should be taxed in the school district in which the vehicle habitually

comes to rest or where they are kept a majority of the time." 32 OP. ATT'Y GEN. NO. 15.

It appears however, that the holding in Valley County supra, was impliedly overruled with regard to county situs by the amendment of section 1759.5, R.C.M. 1935 (Sec. 1, ch. 73, L.1941) which in part added the following language:

> No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county..., other than the county of his permanent residence at the time of application for and issuance of said license plates.

Substantially the same language is presently contained in section 53-119, R.C.M. 1947.

Based on the foregoing language of section 53-119, R.C.M. 1947 my predecessor held: "the county in which a motor vehicle must be licensed is that county wherein the owner makes his permanent residence at the time of application for registration." 36 OP. ATT'Y GEN. NO. 11.

Although section 53-119, R.C.M. 1947 does not expressly apply to the determination of the proper school district situs for taxation it is my opinion the same rule should be applied to both counties and school districts. Section 53-119, R.C.M. 1947 serves as an expression of legislative intent for the purpose of determining taxation situs of motor vehicles.

This opinion expressly overrules and replaces 37 OP. ATT'Y GEN. NO. 108 and overrules 32 OP. ATT'Y GEN. NO. 15.

THEREFORE, IT IS MY OPINION:

> The proper situs for taxation of a motor vehicle is that school district wherein the owner makes his permanent residence at the time of application for registration.

Very truly yours,

MIKE GREELY
Attorney General

PD/ar

VOLUME 37 OPINION NO. 140

CITIES AND TOWNS - Claims against, timely presentment; SECTION 11-1301.

HELD: Section 11-1301 bars the city's payment of that part of the claim which represents items which were purchased by the city more than one year prior to the date of presentment of such claim.

24 April 1978

Kenneth R. Wilson, Esq.
City Attorney
Miles City, Montana 59301

Dear Mr. Wilson:

You have requested my opinion on the following question:

> Does §11-1301, R.C.M. 1947 bar the city's payment of claims for items purchased prior to June 9, 1976 and which were not presented for payment until June 9, 1977?

From June 17, 1975 until June 9, 1977, Miles City purchased numerous items of merchandise from Midland, Inc. for use in various city departments. The items were obtained pursuant to written purchase orders each of which stated that "[t]his purchase order must be attached to and returned with claim." Midland, Inc. submitted a claim for the entire amount of these purchases, $2,163.89, on June 9, 1977. Of this amount, $841.92 was for items purchased prior to June 9, 1976.

Section 11-1301 provides that a demand or account against a city must be presented to the council within one year from the date it accrued, and if not so presented "is forever barred...." If the $841.92 represents demands or an account which accrued prior to June 9, 1976, the city may not pay it because §11-1301 specifically provides that "the council has no authority to allow any account or demand not so presented."

In determining accrual of claims against a municipality, time is computed according to general principals of law. 17 McQuillin Municipal Corporation §48.06 at 79 (1968). The series of purchases you describe is not an "account" to

which is applied the special rule that the limitation runs from the date of the last item. In order for this rule to apply, the claim must represent the "balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties...." Section 93-2614. Those conditions are clearly not met here. Each purchase therefore represented a separate demand against which the limitation ran.

Denying payment for the purchases made prior to June 9, 1976 may seem unduly harsh, especially if the claims were not timely presented due to honest inadvertance, but it is mandated by statute and supported by sound policy reasons:

> By such a requirement a municipality is afforded some protection against stale claims or the connivance of corrupt officials, and is given the opportunity to investigate the source of the claim at a time when the evidence relating to it is fresh and more readily to be had.

McQuillan, §48.02 at 61.

In order to prevent merchants from submitting improper claims, I suggest that you include the text of §11-1301 on all future purchase order forms explaining that claims must be made within a year of accrual.

THEREFORE, IT IS MY OPINION:

> Section 11-1301 bars the city's payment of that part of the claim which represents items which were purchased by the city more than one year prior to the date of presentment of such claim.

Very truly yours,

MIKE GREELY
Attorney General

BG/so

VOLUME 37 OPINION NO. 141

ELECTIONS - Ballot listing for consolidated county offices;
COUNTY OFFICES - Consolidation; election;
CONSOLIDATION - County offices, listing on ballot.

HELD: It is within the discretion of the Board of County Commissioners to designate how consolidated county offices may be listed on the primary and general election ballots.

24 April 1978

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion regarding the following question:

> How should the county offices which have been consolidated pursuant to Chapter 25, Title 16, R.C.M. 1947, be listed on the primary and general election ballots?

Article II, Section 3(2), Montana Constitution provides an optional list of county officers and then provides in pertinent part:

> The Board of County Commissioners may consolidate two or more such offices.

Chapter 25, Title 16, R.C.M. 1947, contains the statutory procedures regarding consolidation of county offices. Reference is also made to consolidation in Section 16-2406. The revised codes of Montana do not state how the consolidated office should be listed on the primary or general election ballot. It is my opinion that that decision is within the discretion of the County Commission.

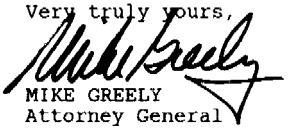
Both the constitutional and statutory provisions provide that the consolidation be carried out by the Board of County Commissioners. Further, Article XI, Section 4(1)(b) of the Montana Constitution does provide that a county has legislative, administrative and other powers provided or implied by law.

As the Board of County Commissioners has the specific power to consolidate county offices, it may also be inferred from that power that the Board of County Commissioners has the authority to designate the title of such offices and therefore how the offices shall be listed on the primary and general election ballots.

THEREFORE, IT IS MY OPINION:

It is within the discretion of the Board of County Commissioners to designate how consolidated county offices may be listed on the primary and general election ballots.

Very truly yours,



MIKE GREELY
Attorney General

MMcG/so

VOLUME 37 OPINION NO. 142

MOBILE HOMES - Taxable value;
TAXATION AND REVENUE - Taxable value of mobile homes;
SECTIONS 84-301.12, 84-301.16, 84-309, and 84-429.14.

HELD: The taxable value of class eleven mobile homes is to be determined as a function of the certified statewide percentage increase pursuant to §84-309, R.C.M. 1947.

26 April 1978

Harold F. Hanser, Esq.
County Attorney
Yellowstone County
Billings, Montana 59101

Dear Mr. Hanser:

You have asked my opinion on this question:

> Is the taxable value of mobile homes 12% of market value pursuant to §84-301.12, Revised Codes of Montana 1947, or is it to be determined as a function of the certified statewide percentage increase pursuant to §84-309, R.C.M. 1947?

My opinion is that the taxable value of mobile homes is to be determined as a function of the certified statewide percentage increase.

Section 84-301.12 classifies mobile homes and provides for the determination of taxable value, saying:

> Class eleven property includes:
> (a) all land, except agricultural land meeting the qualification of 84-437.2;
> (b) all improvements, except those included in classes fifteen and eighteen;
> (c) all trailers affixed to land owned, leased, or under contract for purchase by the trailer owner; and
> (d) all mobile homes, except:
> (i) those held by a distributor or dealer of mobile homes as part of his stock in trade; and
> (ii) those included in class fifteen;

(2) Class eleven property is taxed at 12% of its market value or so much of 12% as is determined under 84-309, whichever is less. (Emphasis added).

Your question is directed to those mobile homes included within class eleven, not those held by a distributor or dealer of mobile homes as part of a stock in trade, nor those included within class fifteen, which covers certain mobile homes used as residences by needy widows or widowers, or recipients of retirement or disability benefits. Section 84-301.16, R.C.M. 1947.

Section 84-309 provides for a decrease in the percentage to be used in determining taxable value of class eleven property if the Director of the Department of Revenue certifies that the market value of such property as a whole has increased. The statute says:

(1) The director of revenue shall certify to the governor, before June 30, 1978, the percentage by which the market value of all property in the state classified under sections 84-301.12, 84-301.16(1)(b), and 84-301.19(1)(a) as of January 1, 1977 has increased due to the revaluation conducted under 84-429.14. This figure is the "certified statewide percentage increase."

(2) The taxable value of property in these three classes is determined as a function of the certified statewide percentage increase in accordance with the following table:

Certified statewide percentage increase	84-301.12	* * *
0		
1%	11.89	[etc.]
2%	11.79	
[etc.]	[etc.]	

(Emphasis added).

The language of these statutes is clear and unambiguous on its face. Therefore, the statute speaks for itself and there is nothing to construe. In re Estate of Baier, ____ Mont. ____, 567 P.2d 943, 946 (1977). Both §§84-309 and 84-301.12 provide that all class eleven property, including mobile homes, is to be valued at a percentage less than 12% if the Director of the Department of Revenue certifies an increase in the market value of that class of property.

Even if these statutes were ambiguous, I would reach the same result. "Where a taxing statute is susceptible of two constructions, any reasonable doubt as to persons intended to be within the particular tax should be resolved against the taxing authority. Cherry Lanes Farms v. Treasurer Gall. Co., 153 Mont. 240, 456 P.2d 296." Nice v. State, 161 Mont. 448, 453, 507 P.2d 527 (1973). In this case then, any doubt should be resolved in favor of allowing mobile home owners the benefit of the lower percentage to be used in determining taxable value specified in §84-309.

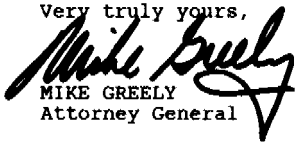
The percentage reduction of §84-309 was passed by the 1977 legislature in House Bill 70. This reduction was meant to mitigate any increase in taxable value and therefore mitigate the actual taxes which might result from the statewide reappraisal project conducted under §84-429.14. Mobile home owners have paid a disproportionately high tax compared to conventional homeowners for a number of years. This is because mobile homes have been assessed annually to current market value. Conventional homes, on the other hand, have not been reappraised for more than fifteen years. To allow conventional homes to receive the decrease in taxable value brought about by §84-309 while denying it to mobile homes would perpetuate this inequity. Mobile homes have, in effect, been subjected to a reappraisal annually. They would now be denied the same percentage reduction allowed on property which has been reappraised for the first time in fifteen years. Mobile homes were specifically changed from their previous class (vehicles) to their present class by the legislature. Laws of Montana (1967), ch. 296. This is the only property changed in this manner. It was for the express purpose of insuring that mobile homes receive the same treatment with respect to taxable value as all other forms of habitation.

A statewide percentage increase for class eleven property was certified to the Governor last week, and some County Assessors and Treasurers who have already sent out tax assessments based on the 12% figure of §84-301.12 are now faced with the problem of correcting these assessments. One suggestion is to give those taxpayers affected a credit on the second installment of their tax, rather than to process refunds for excess taxes collected.

THEREFORE, IT IS MY OPINION:

The taxable value of class eleven mobile homes is to be determined as a function of the certified statewide percentage increase pursuant to §84-309, R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

SS/so