MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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

In the matter of the adoption of a rule relating to the sale of unused or outdated stamps	)))	NOTICE OF PROPOSED ADOPTION OF RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On the 26th day of July, 1978, the Department of Fish and Game proposes to adopt rules for the sale of unused or outdated stamps.

2. The proposed rule provides as follows:

Rule I. SALE OF UNUSED OR OUTDATED STAMPS (1) Pursuant to Fish and Game Commission policy, stamps prepared by the department for sale as hunting or fishing licenses may be offered for sale when they become outdated or unused as set forth in this rule.

(2) Stamps may not be sold during the license year for which they are valid. No more than one stamp in the form of a license may be sold or issued to a person during a license year except as provided by law. Stamps sold as provided in this rule are not valid as hunting or fishing licenses.

(3) Sale of unused and outdated stamps shall be made from the Helena office of the department. Orders for stamps from the current license year will be recorded by the department after August 1 of that license year. Stamps from the preceding year will be available to fill the aforementioned orders and for sale the first business day after expiration of the license year for which the stamps were valid as licenses.

(4) The sale price of an unused or outdated stamp shall be the same price as if that stamp were a valid license.

(5) Stamps purchased under this rule may not be replaced under provisions of 26-202.1(17), R.C.M. 1947.

(6) Sale of these stamps may be made to individuals only upon presentation of a cashier's check or money order in the proper amount.

(7) These stamps shall be made available in a fair manner to all individuals. No more than 100 stamps of a particular type may be sold to an individual purchaser.

(8) Sale of the stamps will be on a "first-come, first-served" basis to individuals after the stamps become available for sale as set forth in subsection (3) of this rule. Letters or other written requests

for sale will be considered in the order received by the department when they are postmarked or dated after the date the stamps are available for sale.

(9) When the department places its order for printing hunting or fishing stamps for a license year, in addition to a number sufficient to supply anticipated license requirements, it shall order a number sufficient to supply anticipated requests for sale of unused or outdated stamps. In the first year these stamps are available for sale, 5,000 bird stamps and 10,000 fishing stamps will be ordered to supply anticipated requests.

(10) During the license year for which a stamp is valid, an unlimited number of these stamps may be sold to an individual purchaser so long as the identifying license numbers and all indices that a stamp is valid for hunting or fishing purposes are removed or detached from each stamp. The price of these stamps is the same as if they were valid for license purposes.

3. This proposed rule is to implement Fish and Game Commission policy for making hunting and fishing stamps available for purchase by the general public after the license year for which they are valid. It is anticipated that there will be more interest in the availability of these stamps now that artwork has been included on them. The rule is designed to provide an orderly and fair process for the sale of these stamps.

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 July 24, 1978.

5. The authority of the department to make the proposed rule is based on Section 26-202.4, R.C.M. 1947; IMP, Sec. 26-106.3, R.C.M. 1947.

Robert F. Wambach, Director

Certified to Secretary of State June 13, 1978

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

In the matter of the amendment of Rule 12-2.10(6)-S1080 relating to outfitter licensing	)))	NOTICE OF PROPOSED ADOPTION OF RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On the 26th day of July, 1978, the Department of Fish and Game proposes to amend Rule 12-2.10(6)-S1080 relating to Outfitter Licensing.

2. The proposed amendment provides as follows:

12-2.10(6)-S1080 REGULATIONS FOR OUTFITTERS AND GUIDES

(1) No change

(2)(a) No change.

(b) Sanitation:

(i) At all camps, the outfitter shall construct necessary facilities for handling stock and maintaining a sanitary camp. Pit toilets shall be limed as needed when in use and covered with earth when camp is not occupied for several months. Under all circumstances these toilets shall be located not less than 100 feet from any surface water and they shall not be constructed in a manner that is likely to contaminate ground waters. Pit bottom must be at least four feet above ground water.

(ii) All livestock corrals must be 100 feet from any surface water.

(iii) The outfitter shall not leave any litter and shall carry or pack out all unburnable refuse from his campsite.

(c) through (f) No change.

(3) No change.

(4) (a) through (d) No change.

(e) The two-year period of residency requirement for issuance of outfitters license, as stated in Section 26-915(2)(b), Revised Codes of Montana, is hereby waived as to any applicant who has established Montana residence as hereinafter defined; who has purchased a going outfitter's business in the state of Montana; and who, in the opinion of the Supervisor of Outfitting, has had sufficient previous experience as an outfitter.

The said two-year period of residence requirement may be waived as to all other applicants who have established residence in the state of Montana but only upon application to, and approval by, the

~~State Fish and Game Commission~~ director.

As the term "residence" is used in this section (e), no particular period of time shall be required but such residence shall be determined as provided in Section 83-303 of the Revised Codes of Montana.

(f) through (i) No change.

3. This amendment is proposed to bring this rule into compliance with current applicable statutes.

4. Interested parties may submit their data, views, or arguments covering the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 24th day of July, 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 24th day of July, 1978.

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

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

8. The authority of the department to make the proposed amendment is based on section 26-913, R.C.M. 1947.

Robert F. Wambach

Robert F. Wambach, Director

Certified to Secretary of State June 13, 1978

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

In the matter of the adoption of Rule 12-2.10(26)-S10290 relating to taxidermist regulations	))))	NOTICE OF ACTION

TO: All Interested Persons

Based upon objections to the proposed rule and in the interest of providing further time for study and review of unlawful control and sale of animal parts, no further action on the proposed rule will be taken.

All meetings previously scheduled are hereby cancelled.

Robert F. Wambach

Robert F. Wambach, Director

June 1, 1978
(date)

Certified to Secretary of State June 13, 1978 .

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the Proposed Adoption of Rules for Probation and Parole	)	NOTICE OF PROPOSED ADOPTION OF RULES
	)	NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after July 30, 1978, the Department of Institutions proposes rules for the conditions to be imposed upon persons on probation.

2. The proposed rules provide as follows:

Rule I - CONDITIONS ON PROBATION OR PAROLE

(1) RELEASE The probationer/parolee is directed, when granted his release to supervision to go directly to his approved program and shall report to his assigned probation/parole officer or other designated person.

(2) RESIDENCE. The Probationer/Parolee shall not change his place of residence without first obtaining permission from his supervising officer.

(3) TRAVEL. The probationer/parolee shall not leave his assigned district without first obtaining written permission from his supervising officer. At the time of his release, the probationer/parolee will be assigned a district and provided written notification of same.

(4) EMPLOYMENT AND/OR PROGRAM. The probationer/parolee shall seek and maintain employment or maintain a program approved by the Board of Pardons and the Probation and Parole Bureau. He shall not change such employment or program without first obtaining written permission from his supervising officer.

(5) REPORTS. The probationer/parolee is required to submit written monthly reports to his supervising officer on forms that will be provided by the bureau. He shall personally contact his probation/parole officer on the dates and times specified by the officer.

(6) INTOXICANTS. At the time of his release on supervision the probationer/parolee will be informed whether or not he may be allowed to drink alcoholic beverages and whether he will be allowed to frequent any place that such items are chiefly for sale.

(7) NARCOTICS. The probationer/parolee shall not use, purchase, possess, give, sell or administer any narcotic drug nor any dangerous drug unless prescribed by a physician. The probationer/parolee shall submit to narcotic or drug testing

as may be required by the discretion of his supervising officer.

(8) WEAPONS. The probationer/parolee shall not own, possess or be in control of any firearm or deadly weapon as so defined by state statute. Further, the Federal Gun Control Act of 1968 (18 U.S.C. App. S 1202(1)(a) prohibits any person who is under indictment or who has been convicted of a felony to possess or carry a firearm while engaged in any act or sporting activities such as hunting.

(9) FINANCIAL. The probationer/parolee shall always consult with his supervising officer and shall obtain permission before going into debt, engaging in a business, purchasing real or personal property, or purchasing an automobile.

(10) MARITAL STATUS. The probationer/parolee shall inform his supervising officer prior to any change in his marital status.

(11) SEARCH A PERSON OR PROPERTY. The probationer/parolee while on probation or parole if so ordered by the sentencing court, shall submit to a search of his person, automobile, or place of residence by a probation or parole officer, at any time of the day or night, with or without a warrant upon reasonable cause as may be ascertained by a probation/parole officer.

(12) RESTITUTION. A probationer/parolee may be required to make restitution in the amount as directed by the sentencing court.

(13) LAWS AND CONDUCT. A probationer/parolee shall comply with all municipal county state and federal laws and ordinances. He shall further conduct himself as a good citizen.

(14) SPECIAL CONDITIONS. The Montana Board of Pardons, the sentencing court, or the Department of Institutions may require other and additional conditions to be placed upon the probationer or parolee. The conditions shall be stated in writing by the agency involved and shall be made a part of any agreement signed by the probationer parolee.

Rule II - WRITTEN AGREEMENT

The foregoing conditions will be reduced to writing and indicated as conditions of probation or parole and will be signed by the probationer or parolee before they may be effected. Further, such written agreement will contain the following statement: "I do hereby waive extradition to the State of Montana from any State in the union and from any territory or country outside the continental United States and also agree that I will not contest any effort to return me to the United States or to the State of Montana. I understand that this probation or parole is granted to and

accepted by me subject to the conditions, limitations and restrictions stated herein and with the knowledge that the Montana Board of Pardons, or the sentencing court or the Montana Department of Institutions have the power at any time in case of violation of the conditions, limitations and restrictions of my probation or parole, and to cause my detention and return to incarceration at any institution so designated by the Department. I have read or have had read to me the foregoing conditions of my probation or parole. I fully understand them and I agree to abide by and strictly follow them and fully understand the penalties involved should I in any manner violate the foregoing conditions, limitations or restrictions."

RATIONALE STATEMENT

3. Before 1975, the Montana Board of Pardons and Parole had the exclusive power to prescribe conditions of parole and the courts had exclusive power to prescribe conditions of probation. By enactment of c.333, Laws of 1975, the Department of Institutions was given power to make rules for conditions of parole, not to conflict with conditions prescribed by the Board of Pardons and Parole. The Department was also authorized to make rules for conditions of probation, not to conflict with conditions prescribed by the sentencing court.

The Department proposes that a list of conditions, some mandatory and others optional, should be established by a single set of rules for parolees and probationers. As to parolees, the Board of Pardons and Parole has approved these proposed rules and by separate notice will initiate action to amend its own rule on conditions of parole (ARM 20-3.10 (6) -S10060, at pp. 20-11 and 20-12 of the Administrative Rules of Montana) into a form consistent with these conditions.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Department of Institutions, attention: George M. Cuff, Chief Probation and Parole Bureau, 1539 11th Avenue, Helena, Montana 59601 (or phone 449-3097) on or before July 30, 1978.

5. If a person who is directly affected by the proposed rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Cuff no later than July 24, 1978.

6. If the Department receives requests for a public hearing from more than 25 persons who are directly affected

by the proposed rules, said number being less than 10% of all persons directly affected, or from the Administrative Code Committee or other public entity mentioned in 82-4204(1)(6) R.C.M. 1947, a hearing will be held at a later date to be published in the Montana Administrative Register.

7. The authority of the Department to adopt the Proposed Rules is based on Section 95-3302, R.C.M. 1947.

LAWRENCE M. ZANTO, Director
Department of Institutions

Certified to the Secretary of State, June ____, 1978.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

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

TO: ALL INTERESTED PERSONS

1. On or after JULY 30, 1978, the Department of Institutions proposes rules for the admission of persons to continuing care facilities of the Department of Institutions.

2. The proposed rules read as follows:

Rule I. DEFINITION OF TERMS. (20.11.005)

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

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

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

(4) "Applicant" shall meand a person being referred for admission by a Mental Health facility or licensed mental health professional as specified in Rule III.

(5) "Mental Health Professional" shall be a physician or licensed psychologist.

(6) "Mental Health Facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this chapter.

Rule II. ELIGIBILITY FOR ADMISSION TO A CONTINUING CARE FACILITY (20.11.010)

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

(1) Must be in need of continuing care services not

available in the community.

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

(3) Geriatric patients at Warm Springs State Hospital who do not require intensive psychiatric care shall have first priority.

Rule III APPLICATION FOR ADMISSION (20.11.015)

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

RATIONALE STATEMENT

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

An earlier version of these proposed rules was published October 25, 1977 in the Administrative Register (pp 632-633) and comments thereon have been incorporated in this version.

4. Interested persons may present their data, view or arguments in writing. Written statements may be submitted to the Department prior to July 30, 1978. Any written statement or questions can be made to Ron Phelps, Director's Office Staff, 1539 Eleventh Avenue, Helena, Montana 59601 phone 449-3930.

5. If a person who is directly affected by the proposed rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Phelps no later than July 24, 1978.

6. If the Department receives requests for a public hearing from more than 25 persons who are directly affected by the proposed rules, said number being less than 10% of all persons directly affected, or from the Administrative Code Committee or other public entity mentioned in 82-4204(1)(6) R.C.M. 1947, a hearing will be held at a later date to be published in the Montana Administrative Register.

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

LAWRENCE M. ZANTO, Director
Department of Institutions

Certified to the Secretary of State June 1, 1978.

BEFORE THE COMMISSIONER
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of rules pursuant to the Contractor's Bond Law	)))	NOTICE OF PUBLIC HEARING on the Proposed Adoption of Contractor's Bond Rules

TO: All Interested Persons

1. On July 28, 1978, at the hour of 8:30 A.M. in the auditorium of the Highway Department, located at 6th and Roberts,
Helena, Montana, a public hearing will be held in the matter of the adoption of the proposed contractor's bond rules. The hearing officer will be Paul J. Van Tricht and the rules provide as follows:

Section 24.16.001 DEFINITIONS. For purposes of the Act:
(a) "Bond" means an agreement under which one becomes surety to pay for all of the wage and fringe benefits owed to employees of the contractor to an employee's trust.
(b) "Surety" means the person or corporation guaranteeing the obligations of the contractor/employer.
(c) "Other Form of Security" includes a reasonable, bona fide method of insuring that employees will be paid all of their wages and fringe benefits including, but not limited to:

1. Performance and/or Payment Bonds.
2. Certificates of Deposit which are in the name of the Commissioner and the contractor and drawable only by both of them.
3. Cash bond.

Section 24.16.002 EMPLOYER TO FURNISH RECORDS
(a) In order to enable the Commissioner to determine the size of the bond or other form of security, an employer shall furnish upon request the necessary records and information relating to the employer-contractor's payroll.
(b) The information provided in (a) will be treated as confidential information to protect the employer's business interests. The Commissioner in his discretion may release this information only when the interests of justice clearly outweigh the employer's right to privacy.

Section 24.16.003 FINANCIAL STATEMENT
(a) A resident contractor electing to file a financial statement under the Section 41-2704 R.C.M. exception, shall at the request of the Commissioner or the Administrator of the Labor Standards Division file certified financial statements at 3 month intervals.

(b) For purposes of this act, "Net Worth" means owner's equity in the standard accounting formula of owner's equity = assets - liabilities.

2. The reason for the adoption of the rules are:
   (a) to define the terms of the law
   (b) to require the employer to furnish records so that the Commissioner can determine the size of the bond needed to protect the employees
   (c) to require current financial statements in cases where a contractor may be in financial jeopardy with the consequent danger to the employees

3. Interested parties may submit their data, views or agreements concerning the proposed rules in writing, to the Commissioner of the Department of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana. Written comments must be received not later than July 28, 1978.

4. If the Commissioner receives requests for a public hearing on the proposed adoption of the rules from 25 or more persons, a public hearing will be held at a later date, notice of which will be supplied.

5. The authority of the Commissioner to promulgate rules is based on Section 41-2705 R.C.M. 1947.

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

Certified to the Secretary of State June 15, 1978

BEFORE THE COMMISSIONER
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of rules regulating the conduct of private employment agencies	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES (Regulating Private Employment Agencies)

TO: All Interested Persons

1. On July 27, 1978, at 10:30 A.M. the Commissioner will hold a hearing on the proposed Private Employment Agencies Rules at the Highway Department auditorium building located at 6th and Roberts Streets in the city of Helena, Montana. The hearing officer will be Mr. Paul J. Van Tricht, J.D.

2. The proposed rules provide as follows:

Section 24.15.000 DEFINITIONS. Division - means the Labor Standards Division of the Montana Department of Labor and Industry.

Administrator - means the Administrator of the Labor Standards Division.

Commissioner - means the Commissioner of Labor.

Exploratory Interview or Exploratory Job Order - means an interview agreed to by the employer even though there is no definite position open with the employer.

Job Referral Document - The document or copy of document given to the applicant in which the pertinent facts about the agency, the employer and the job are listed.

Scheduled Appointment - means a definite time and date of interview with a specific employer or employer representative arranged for by an agency.

Temporary Employment - means that employment lasting less than ninety (90) days.

Permanent Employment - means that employment lasting ninety (90) days or more.

Commission Employment - means that employment in which the applicant is paid on a commission basis.

Fee Paid - means a position in which under no circumstances is the applicant charged a deposit, retainer, or fee directly, or indirectly at any time in connection with such position, either by the agency or the employer.

Advertising - means any material or means used by the employment agency for solicitation or promotion of business. This includes, but is not limited to, business cards, news papers, radio, television, brochures, pamphlets, gift items and signs, referral cards, invoices, letterheads, or other forms that may be used in combination with the solicitation and promotion of business.

License - means that license issued by the Labor Standards Division to private employment agencies.

One month - means 1/12th of a year or 4-1/3rd weeks.

Contract - means that agreement entered into by the applicant and the agency and in some cases the employer whereby the applicant is placed in a position with the employer and the payment of fees to the agency is agreed to.

Rationale: These terms are recurrently used in the rules and these definitions are to define these terms in their plain and ordinary meaning.

Section 24.15.001 RECORD KEEPING REQUIREMENTS. (1) Method of maintaining records. All records of the agency pertaining to a job referral, and/or placement of an applicant for employment shall be maintained together or adequately cross indexed for easy retrieval of all such records for the Labor Standards Division. This includes, but is not limited to, the application, contract, addendums to contracts, reference information (employment, personal or credit), and a copy of all job orders and job referral documents.

(2) A separate file shall be maintained for all applicants placed by the agency. This file shall be alphabetical or by adequate cross reference indexed for easy retrieval for the Labor Standards Division.

(3) An adequate log of job orders shall be maintained. Each job order shall have a log number assigned to it. The log will contain the date the job order was placed by the employer and the name of the employer placing the order. All job orders shall be recorded in numerical order and registered in the log. The log number will be used on any contracts, advertising, correspondence, and placements that are related to the job order. If the agency wishes, it may maintain a separate log for "fee paid" orders. The log shall be preserved for three years.

(4) Each agency shall keep a record of receipt of all money received from each applicant in payment of a charge for service.

The records shall be filed together or adequately cross-indexed for easy retrieval for the Labor Standards Division.

(5) Records must be maintained for a period of three years with the exception of job advertisements in sub-section 3 of Sub-Chapter 6 which must be maintained for one (1) year.

Rationale: This rule supplements the statutory record keeping requirements, with emphasis on the availability of such information to the Director.

Section 24.15.002 BONA FIDE JOB ORDER. (1) A bona fide order for employment may be considered to have been given by an employer to an employment agency under the

following conditions:

(a) If the employer or his agent, in person, by telephone, telegram, or in writing, registered a request that the agency recruit, or gives permission to the agency to refer job applicants for employment who meet the specifications of the stated job.

(b) Such an order is valid for the referral of any qualified applicant until it is filled or cancelled by the employer and may serve as the basis for agency advertising. The agency is required to recontact the employer after every thirty days to insure that the position is still vacant prior to any additional advertising or referrals.

(c) Exploratory job orders or interviews will not be used by employment agencys in situations where the agency has a "regular" job order, or access to one.

(2) In the process of obtaining a job order the employment agency, in an introductory statement, shall identify itself to employers as an employment agency. This shall be done in all cases. If the agency is employer-fee paid only, the employer must be so advised during the initial contact.

(3) When accepting a "fee paid" job order the employment agency will give the applicant notice in writing that the fee is "employer paid" and that the applicant is not responsible for any portion of the fee.

Rationale: These provisions clarify the recordkeeping requirements and seek to openly reveal the nature of the contract between applicant and agency.

Section 24.15.003 JOB ORDER, INFORMATION TO BE CONTAINED IN. (1) Each job order shall contain all of the following information:

(a) The normal number of hours of work per day and any exceptions.

(b) Weekend or night work required. Specify the number of hours and which days.

(c) Whether fee is employer paid or applicant paid.

(d) The job title and classification.

(e) A list of special skills required to perform adequately on the job and the minimum performance or skill level required. Skills required means those skills which will be regularly and habitually required to gain the job, perform at a minimum level on the job and to retain the job.

(f) The log number of the job order.

(g) The date and time of day the job order was received.

(h) The salary, hourly pay rate or salary paid for the position. A salary or wage must be specified in terms of dollars and cents. If earnings are to be paid on a commission basis, the order must contain a statement as to whether or not any guaranteed salary or draws are involved.

(i) The name, address and telephone number of the company placing the job order.

(j) The name and title of the individual who placed the job order for the employer and the name and title of the individual who accepted the order for the employment agency.

(k) Whether or not union membership is required and the approximate cost to the applicant for any union fees and dues.

(l) Whether or not the employer has any existant labor troubles.

(m) When a job order is filled the following information will be appended to the order:

1. The true name, as it appears on the contract, of the individual who obtained the job.
2. The date the job was filled.
3. The amount of the fee charged for the service.
4. Whether the fee was employer paid or applicant paid.

(n) A list of established fringe benefits such as but not limited to holidays, sick leave, car allowances, expense allowances, room and board, medical and hospital insurance, vacations and the statement whether or not these benefits are paid for by the employer as indicated by the employer.

Rationale: This rule insures disclosure that reflect honestly the nature of employment the applicant is being referred to.

Section 24.15.004 JOB INTRODUCTION CARD (1) The job introduction card shall be assigned the same log number as the job order and shall contain the following information:

(a) Employment agency name and address.
(b) Applicants full name.
(c) Name of person conducting the interview for the employer.
(d) Date and time of interview.
(e) Address of person conducting interview.
(f) A description of the job position applied for.
(g) Name of employment agency counselor making the referral.
(h) Notice to applicant if fee is employer paid.

Rationale: This rule is designed to effect full and complete disclosure of the quid pro quo in the employment agency contract.

Section 24.15.005 REBATE OF SERVICE CHARGES INTEREST AND/OR PLACEMENT FEES. (1) In all cases where employment lasts less than ninety (90) full calendar days, all interest, paid or required to be paid by an applicant to any private employment agency shall be allowed as a credit against any fees charged by the agency.

Rationale: This rule is to clarify the requirements of 41-1431.1 governing excessive fees.

Section 24.15.006 ADVERTISING. (1) No employment agency shall knowingly publish or cause to be published any false, fraudulent or misleading information, representation, notice or advertisement. The following examples are of the types of advertising which are considered false or misleading:

(a) Ads worded so as to mislead the applicant regarding the nature of the position advertised.

(b) Using the phrase "lowest fee" or similar words where the agency's fee is not in fact the lowest fee rate in effect in the area in which the agency does business.

(2) The following standards must be used in all agency advertising:

(a) All advertising must be factual as to the job requirements. Sufficient information must be contained in each ad so as to indicate the nature of the position.

(b) No salary shall appear in an ad except that which appears in the actual job order as a starting salary. Where the top of the salary range is quoted, it must be preceded by the lowest of the salary range and the word "to".

(c) The word "open" or the symbol "$$$" or words and symbols of similar importance may not be used as a substitute for the salary of any position or positions in an ad.

(d) The symbol "+" or the word "plus" may be used in connection with a salary appearing in an ad only when it refers to an extra such as a car, bonus, commission or lodging which is provided in addition to the given salary. Such extras must be contained in the agency's job order for the position. The salary figure in the advertisement can only represent the amount of salary or draw as shown on the job order.

(e) The word "up" may be listed with a salary appearing in an ad only when the employer has made a definite commitment to the agency to pay a higher salary for a qualified employee. The commitment by the employer to pay a higher salary must be contained in the agency's job order for the position.

(f) If an advertised salary is based entirely or partially on a bonus and/or commission the ad must so state this fact.

(g) Whenever an employment agency advertises or states in its letters that employees of the agency are "certified", "registered", or "Licensed" (other than by the Labor Standards Division) or uses other special terms conveying special qualifications or abilities, the advertising or letter must also set forth the identity of the governmental agency or other organization which has certified, registered or licensed such employees.

(h) Each job position that is advertised must contain the log number.

(i) An employment position will not be advertised on the same day under two or more different job discriptions.

Rationale: This rule implements specifically, but not

exhaustively, the safeguards contained in Section 41-1429 R.C.M. 1947.

Section 24.15.007 FEE SPLITTING. No arrangement can be made by agency and employer whereby applicant fees are split.

Rationale: This rule supplements 24.15.002 and does not allow fee splitting unless the applicant is aware of the arrangement and absolved from liability for the portion of the fee the employer pays.

Section 24.15.008 When an applicant resigns or is discharged from his employment through his own fault, the agency shall upon request meet and confer with the applicant about a refund within 15 days of the date of separation.

Rationale: This rule is to provide protection to the applicant when the employment does not last as anticipated.

Section 24.15.009 In addition to the requirements of Section 24.15.007 and Section 24.15.008 the following clauses are required to be in all contracts between agencies and applicants for employment when placements are made or to be made on commission positions:

(1) "Should proof be presented after 90 days of employment that the estimates of total gross earnings were inaccurate, _____(agency)_____ shall refund to the applicant any excess fees paid by him, or the applicant shall pay to _____(agency)_____ any deficiency in fees."

Rationale: This rule provides for fee charges when contingencies occur in the employment contract.

Section 24.15.010 The following clauses or statements are not required to be in any contract between the employment agency and the applicant for employment who may be responsible for the agency's charge for service directly or indirectly but so long as consistent with other required or permissable clauses may be included in the contract between the employment agency and the applicant for employment:

(1) "One month equals 1/12th of a year or 4 1/3 weeks."

(2) "These service charges can be deducted for income tax purposes."

(3) "I will keep the agency informed about the results of all arranged interviews, and will advise the agency at once upon acceptance of employment, or if employment which has been accepted is terminated for any reason."

(4) "I hereby give permission for references to be checked for purposes of employment, and understand that upon request _____(agency)_____ will divulge the content of same to me."

(5) "If the applicant fails to perform this contract, or

to pay the agency's service charge provided herein, then the applicant agrees to pay _____(agency)_____ reasonable attorney's fees and other costs of collection as determined by a court."

(6) "There shall be no oral agreements or oral additions to this contract. Any further terms, conditions or understandings shall be in writing."

Rationale: This rule is intended to aid employment agencies in drafting fair contracts.

Section 24.15.011 Whenever an agency receives notice from the applicant or the director that an applicant has terminated employment within the time which requires a refund of a portion or all of the agency's charge for services the agency shall refund within seven days of such notice, by cash and not by goods or services, all sums due as a refund to the applicant. Contracts or agreements shall not contain statements or understandings concerning job replacement or other goods and services contrary to this rule.

Rationale: This rule restricts subtle inventions which may be used to circumvent the refund requirements.

Section 24-15.012 There shall be no oral agreements or oral additions to any contract between the employment agency and the applicant for employment. Any terms, conditions or understandings between the employment agency and the applicant for employment shall be in writing.

Rationale: A parol evidence rule to protect all parties.

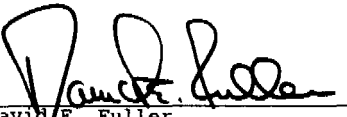
Section 24.15.013 Renewal of License: The annual license fee shall be assessed from July 1 of the existing year until June 30 of the following year. Licenses that are renewed at times different from the annual schedule shall run until the 30th of June, at which time that license shall expire and the renewal fee will be due and payable for the next year. A new application and copy of the agency contract shall be sent in with the renewal fee.

Rationale: This rule is to facilitate the orderly licensing of employment agencies by scheduling the annual fees to one time period.

(3) Interested persons may submit their opinion, data, and criticisms on or before the 27th day of July, 1978, to David E. Fuller, Commissioner of the Department of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana 59601.

4. The authority of the Commissioner to adopt these

rules is based on Section 41-1423 R.C.M. 1947.



David E. Fuller
Commissioner of the Department of Labor and Industry

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

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32-2.6A(78)-S6330 to remove the EIA test requirement on horses or other equidae imported into Montana.	NOTICE OF PUBLIC HEARING ON AMENDMENT OF ARM RULE 32-2.6A(78)-S6330 (EIA Test Requirement on Equidae)

TO: ALL INTERESTED PERSONS

1. On July 13, 1978, at 1:30 p.m. in the Highway Department Auditorium, State Highway Building, Capitol Complex, Helena, MT. 59601, a public hearing will be held to determine whether the existing requirement that equidae entering Montana be negative to an approved test for Equine Infectious Anemia (EIA) should be dropped.

2. The proposed amendment will affect paragraph (19) of Rule 32-2.6A(78)-S6330 which as proposed will read as follows: (deleted material interlined)

"(19) Horses, mules and asses

~~(a)--Horses, mules and asses~~ may enter the State of Montana provided they are transported or moved in conformity with paragraphs (1) through (14) of this rule~~,~~ ~~and~~.

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

(3) This proposal is made because of the difficulty in insuring compliance with the test requirements, the fact that there is no adequate disease control program for EIA within the state, and the expressed desires of a number of Montana horse owners. Under other parts of the import rule there is a requirement that a permit be obtained prior to importation of horses into Montana. The department, acting under the permit authority is retaining the power to require the EIA test on an "as needed" basis for horses coming from areas with a high incidence of the disease.

(4) Among issues to be considered are whether the dropping of the test requirement will cause an increase in the incidence of EIA in Montana.

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

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

7. The authority of the department to amend this rule is based on section 46-208 R.C.M. 1947.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

Certified to the Secretary of State June 6, 1978.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of a rule pertaining to livestock market releases, their duration and circumstances under which diversions are allowed.	NOTICE OF PROPOSED ADOPTION OF RULE (Livestock Market Releases) NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On July 24 the Board of Livestock proposes to adopt a rule relating to livestock market releases, their duration, and circumstances under which diversions will be allowed.

2. The language of the proposed rule is as follows: "LIVESTOCK MARKET RELEASES-DURATION AND CIRCUMSTANCES UNDER WHICH DIVERSION ALLOWED. Neither a licensed livestock market, nor a person having possession or control of livestock consigned to a Montana licensed livestock market shall remove livestock from the market until the release required by section 46-801.2 (3) has been issued. The release shall describe the livestock for which it is issued by sex, brand, breed and number and shall be valid for 36 hours after issue. Diversion from the destination shown on the release shall not occur until the person making the diversion has obtained either a brand inspection or an appropriate transportation permit authorizing movement of the livestock to the new destination."

3. This rule is being proposed in order to clarify the livestock market release. The thirty six hour validity and requirement for further inspection or issuance of transportation permit when a destination is being changed are consistent with other provisions of the brand inspection law and are needed to prevent misuse of the release, and the switching of animals shown thereon.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Les Graham, Department of Livestock, Capitol Station, Helena, MT. 59601. Written comments must be received by July 24, 1978.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Les Graham on or before July 24, 1978.

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

7. The authority of the department to amend this rule is based on section 46-803, RCM 1947.

ROBERT G. BARTHELMESS
Chairman
Board of Livestock

Certified to the Secretary of State June 15, 1978

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32-2.10(6)-S1060 requiring that the Department of Livestock be notified of proposed changes in tariffs.	NOTICE OF PROPOSED AMENDMENT ARM RULE 32-2.10(6)-S1060 (Livestock Market Tariff Changes) NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On July 24 the Board of Livestock proposes to amend Rule 32-2.10(6)-S1060 to require that the Department of Livestock be notified of proposed changes in market tariffs.

2. The Rule as proposed to be amended provides as follows: Paragraphs (1) (2) and (3) remain the same. A new paragraph (4) is proposed which reads: "(4) Any licensed livestock market seeking to alter its market tariffs pursuant to applicable regulations of the federal government shall notify the Administrator of the Brands-Enforcement Division at least 30 days prior to the effective date of the tariff changes by sending him a copy of the proposed tariff."

3. The rule is proposed for amendment because of the likelihood of change in the tariff regulations of the Packers & Stockyards Agricultural Marketing Service, USDA (P & S). Under the federal change livestock markets will no longer be required to justify tariff increases and receive prior approval from P & S before tariff changes become effective. Instead, the regulations provide for prior public notice of the proposed increases and that if no complaints are received the tariffs become automatically effective without review and approval by P & S. The Board wishes to exercise its powers to examine tariff changes in order to make any appropriate response to the P & S if the Board feels the tariffs are unjust or discriminatory. The Board has no other interest in regulating the tariffs of livestock markets.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Les Graham, Department of Livestock Capitol Station, Helena, MT. 59601. Written comments must be received by July 24, 1978.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Graham on or before July 24, 1978.

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

Register.

7. The authority of the department to amend this rule is based on section 46-907, R.C.M. 1947.

ROBERT G. BARTHELMESS
Chairman
Board of Livestock

Certified to the Secretary of State June 15, 1978

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

IN THE MATTER of the Proposed Amendment of ARM 40-3.14(10)-S14040 Officials (1)(a), (2)(f)(i), and (3)(a) and (d) and ARM 40-3.14(6)-S1430 Licensing Requirements (10).	NOTICE OF PROPOSED AMENDMENT of ARM 40-3.14(10)-S14040 Officials and ARM 40-3.14(6)-S1430 Licensing Requirements NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On July 23, 1978, the Board of Athletics proposes to amend 40-3.14(10-S14040 Officials (1)(a), (2)(f)(i), (3)(a) and (d) and 40-3.14(6)-S1430 Licensing Requirements.

2. The amendments as proposed will read as follows: (new matter underlined, deleted matter interlined)

"40-3.14(10)-S14040 OFFICIALS (1) Introduction:
(a) The officials shall consist of a referee, three ~~two~~ judges, a timekeeper, an announcer and a physician. The judges and the referee shall be named by the club conducting the contest, who shall notify the Board of the name of such ~~referee~~ officials at least forty-eight hours before any boxing contest or exhibition is held.
(2) Referee:
(f) The referee shall have power:
~~(i) "To cast the third vote in addition to the two judges, all three votes being of equal value in arriving at a decision as to the outcome of each contest. In the event of any two votes coinciding, the result shall be so determined. In the event of all three votes disagreeing, the contest shall be declared a draw. "~~

The remaining numbers under (f) to be re-numbered.

"(3) Judge:
(a) The three ~~two~~ judges shall be stationed at opposite sides of the ring.
(d) All three votes are of equal value in arriving at a decision as to the outcome of each contest. In the event of any two votes coinciding, the result shall be so determined. In the event of all three votes disagreeing, the contest shall be declared a draw. The decisions of the judges shall be based primarily on effectiveness, taking into account the following points:"

The reason for the proposed amendment is to achieve uniformity with current national and world boxing regulations.

"40-3.14(6)-S1430 LICENSING REQUIREMENTS
(10) Applicants for license shall, before such license is issued and annually thereafter, pay to the Board a license fee as follows: Managers, $10.00; Referees, $10.00; Professional Wrestler or Boxer, $10.00; Seconds, $5.00; and Promoters and Matchmakers for professional boxing or wrestling conducted by licensed clubs, whether acting individually or as an employee or agent of a club or clubs, $100.00 in conjunction with bond requirement. The Board may require the club or clubs to deduct the license fees from the contestants' guarantee as provided in the contract."

The reason for the proposed amendment is to facilitate securing the license fees from the contestants.

3. Interested parties may submit their data, views or arguments concerning the proposed amendments of the rules in writing to the Board of Athletics, Lalonde Building, Helena, Montana 59601. Written comments in order to be considered must be received no later than July 21, 1978.

4. If the Board of Athletics receives requests for a public hearing on the proposed amendments of the rules from more than ten percent (10%) 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 Athletics to make the proposed amendments of its rules is based on Section 82-301 R.C.M. 1947.

DATED this 15th day of June, 1978.

BOARD OF ATHLETICS
PATRICK J. CONNORS, CHAIRMAN

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

Certified to the Secretary of State 6-15, 1978.

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

IN THE MATTER of the Proposed Adoption of a new rule relating to Public Participation in Board decision making functions.) NOTICE OF PROPOSED ADOPTION of a new rule relating to Public Participation in Board decision making functions

NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On July 23, 1978, the State Electrical Board proposes to adopt a new rule relating to public participation in Board decision making functions.

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

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

3. Interested parties may submit their data, views, or arguments concerning the proposed adoption of the new rule in writing to the State Electrical Board, Lalonde Building, Helena, Montana. Written comment in order to be considered must be received no later than July 21, 1978.

4. If the State Electrical Board receives requests for a public hearing on the proposed adoption of the new rule from more than ten percent (10%) 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 State Electrical Board to make the proposed adoption of the new rule is based on Section 66-2805 (2)(a), R.C.M. 1947.

DATED this 15th day of June, 1978

STATE ELECTRICAL BOARD
CHARLES McQUEARY, PRESIDENT

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

Certified to the Secretary of State 6-15, 1978.
MAR NOTICE NO. 40-3-38-8

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MASSAGE THERAPISTS

IN THE MATTER OF THE Proposed Adoption of a new rule relating to Public Participation in Board decision making functions.	NOTICE OF PROPOSED ADOPTION of a new rule relating to Public Participation in Board decision making functions NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On July 23, 1978, the Board of Massage Therapists proposes to adopt a new rule relating to public participation in Board decision making functions.

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

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

3. Interested parties may submit their data, views or arguments concerning the proposed adoption of the new rule in writing to the Board of Massage Therapists, Lalonde Building, Helena, Montana. Written comments in order to be considered must be received no later than July 21, 1978.

4. If the Board of Massage Therapists receives requests for a public hearing on the proposed adoption of the new rule from more than ten percent (10%) 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 Massage Therapists to make the proposed adoption of the new rule is based on Section 66-2904 (3), R.C.M. 1947.

DATED this 15th day of June, 1978.

BOARD OF MASSAGE THERAPISTS
THOMAS PREWETT, CHAIRMAN

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

Certified to the Secretary of State 6-15, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MASSAGE THERAPISTS

IN THE MATTER of the Proposed Amendment of ARM 40-3.50(6)-S5030 Set and Approve Requirements and Standards: Minimum Educational Requirements; ARM 40-3.50(6)-S5070 Inactive List - Hardship; and ARM 40-3.50(6)-S5080 Grandfather Clause	NOTICE OF PROPOSED AMENDMENT of ARM 40-3.50(6)-S5030; ARM 40-3.50(6)-S5070; and ARM 40-3.50(6)-S5080 NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On July 23, 1978, the Board of Massage Therapists proposes to amend rules 40-3.50(6)-S5030 Set and Approve Requirements and Standards: Minimum Educational Requirements; 40-3.50(6)-S5070 Inactive List - Hardship; and 40-3.50(6)-S5080 Grandfather Clause.

2. The amendments as proposed will read as follows: (new matter underlined, deleted matter interlined)

"40-3.50(6)-S5030 SET AND APPROVE REQUIREMENTS AND STANDARDS: MINIMUM EDUCATIONAL REQUIREMENTS (1) Section 66-2906 R.C.M. 1947 requires that 'each applicant(for Massage Therapist license) shall hold a diploma or credentials issued by a recognized, approved school of massage ~~or like institution~~, certifying not less than 1,000 hours of study satisfactory to said school.'" Delete (2) (a),(b), (c)(i), (i),(ii),(iii), (iv),(v),(vii), (viii), and (ix). (d) and (e) will be changed to read as follows: (new matter underlined, deleted matter interlined)

"~~(d)~~(2) Upon completion of the requirements stated ~~in (a), (b) and (c)~~ above and upon presentation to the Board by the applicant the necessary documentation, diploma, transcript or certificate from the certifying schools the applicant shall be admitted to the examination.

~~(e)~~(3) Correspondence courses shall no longer be approved or accepted in lieu of the requirements stated ~~in (a), (b) and (c)~~ above. ~~Any students who may have enrolled in correspondence courses prior to this effective date shall be given credit for those correspondence courses upon their successful completion.~~ "

The reason for the amendment is that since the requirements state that they must be graduated from an approved school of Massage with 1,000 hours, it is no longer necessary to state the necessary courses.

"40-3.50(6)-S5070 INACTIVE LIST - HARDSHIP (1) An

inactive licensee (due to ill health or other reasonable cause) ~~minimum fee set by the Board at $5.00 per year to keep the name on renewal mailing list or until able to resume work.~~ will be placed on the inactive list and remain in good standing with the Board until able to resume work. A letter must be submitted in writing for Board approval. "

The reason for the amendment of the rule is that in the past, the Board charged a $5.00 fee strictly to place the name on the mailing list. Most individuals did not pay the fee and let the license be revoked. To reinstate a license all an individual was required to do was appear before the Board or write a letter giving his reasons for non-payment. The entire process was time consuming and very ineffective.

"40-3.50(6)-S5080 GRANDFATHER CLAUSE (1) January, 1968 was established as the cut-off date for licensing without examination. (This was done due to late appointment of original Board and organization.)" ~~(2) For those failing to make application for license under the Grandfather Clause before January 1968 and having written proof that they were practicing Massage in Montana three (3) months prior to the passage of the law, may be licensed by passing an examination and payment of fees as required of all applicants."~~

Sub-section (2) is proposed for deletion in that Section 66-2905 R.C.M. 1947 no longer provides for grandfather applicants.

3. Interested parties may submit their data, views, or arguments concerning the proposed amendment of the rules in writing to the Board of Massage Therapists, Lalonde Building, Helena, Montana 59601. Written comments in order to be considered must be received no later than July 21, 1978.

4. If the Board of Massage Therapists receives requests for a public hearing on the proposed amendment of the rules from more than ten percent (10%) 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 Massage Therapists to make the proposed amendment of the rules is based on Section 66-2904 (3), R.C.M. 1947.

DATED this 15th day of June, 1978.

BOARD OF MASSAGE THERAPISTS
THOMAS PREWETT, PRESIDENT

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

Certified to the Secretary of State 6-15, 1978.

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

IN THE MATTER of the Proposed) Amendment of ARM 40-3.82(6)-) S8280 Examination (1)(c) and) (2).)	NOTICE OF PROPOSED AMENDMENT of ARM 40-3.82(6)-S8280 Examinations NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On July 23, 1978, the Board of Plumbers proposes to amend 40-3.82(6)-S8280 Examinations (1)(c) and (2).

2. The amendment as proposed will read as follows: (new matter underlined, deleted matter interlined)

"40-3.82(6)-S8280 EXAMINATION (1) Qualifications:

(c) Application for Master Plumber's License or ~~of~~ Journeyman Plumber's License may be made by anyone professing the qualifications set forth in (1) and (2) above. All applications must be submitted on forms furnished by the Board 30 days prior to the examination. Those applications received after the deadline will be processed for the following examination. Re-examination fees must also be submitted 30 days prior to the examination.

(2) Time and Place of Examination: Examinations to determine the fitness of an applicant, either master plumber or journeyman plumber, will be held at the pleasure of the Board at not less than ~~six~~ three month intervals. The number of the examinees will be limited to a total number of 30 per examination. The examination will be held in the city of Helena, Montana, unless the Board specifically designates a different place for any such examination."

The reason for amendment of the above stated rule is that at present the number of examinees is reaching 50 individuals per examination. The facilities, which are the best available, and the number of Board members to monitor the examination are not adequate to administer a fair and equitable examination to more than thirty individuals at a given time. Therefore the Board is amending the above stated rule to limit the number of examinees and provide for more frequent examinations.

3. Interested parties may submit their data, views, or arguments concerning the proposed amendment of the rule in writing to the Board of Plumbers, Lalonde Building, Helena, Montana 59601. Written comments in order to be considered must be received no later than July 21, 1978.

4. If the Board of Plumbers receives requests for a public hearing on the proposed amendment of the rule from more than ten percent (10%) 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 Plumbers to make the proposed amendment of its rule is based on Section 66-2409, R.C.M. 1947.

DATED this 15th day of June, 1978.

BOARD OF PLUMBERS
WALTER E. TYNES, JR.
CHAIRMAN

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

Certified to the Secretary of State 6-15, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF REAL ESTATE

IN THE MATTER of the Proposed) Adoption of new rules) regulating franchising)	NOTICE OF HEARING on the Proposed Adoption of new rules regulating franchising

TO: ALL INTERESTED PERSONS:

1. On August 5, 1978 at 10:00 o'clock A.M. in the Viking Lodge, Whitefish, Montana, a public hearing will be held to receive testimony in the above entitled matter.

2. The rules as proposed will read as follows:

"1. Franchising means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

a. a franchisee is granted the right to engage in the business or services under a marketing plan or system prescribed in substantial part by the franchisor; and

b. the operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trade mark, service mark, trade name, logotype, advertising or other commercial symbols designating the franchisor or his affiliate;

c. the franchisee is required to pay, directly or indirectly, a franchise fee.

2. 'Franchisee' is a person or business entity to whom a franchise is granted.

3. 'Franchisor' is a person or business entity who grants a franchise.

4. 'Franchise Fee' is any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into and operate a business under a franchise agreement.

5. Any broker who operates under, or uses, a franchise name shall:

a. register such franchise name with the Board of Real Estate, on a form to be supplied by the Board.

b. incorporate in the franchise name and logotype, his own name; however, the broker's name may not be less than fifty percent (50%) of the surface area of the entire combined area of both the broker's name and the franchise name or logotype; and

c. conspicuously display on or in all of his advertising, and on his letterhead, deposit receipt forms, listing agreements and other printed materials generally available to the public, a statement to the effect that his real estate brokerage office is independently owned and operated.

d. The franchisee will not pay or split any portion of

the compensation or commission directly or indirectly, with the franchisor, in violation of section 66-1936 (1) R.C.M. 1947 as amended.

6. For the purpose of this rule, the term "broker's name" is that name which appears on the real estate broker's license granted by the Board of Real Estate of the State of Montana, or the name of the business entity under which the broker, franchisee, does business, but does not include the name of the franchisor."

3. The reasons for the proposed rules are as follows:

A. Many people believe that when dealing with a real estate franchisee they are dealing with a nation-wide real estate brokerage agency, when, in fact, they are actually dealing with a local real estate licensee or agency who happens to have purchased a franchise from a franchisor. The franchisor is a real estate advertising and promotion agency, and as such, does advertise nationally, however, is not involved in the actual real estate transactions of local real estate licensees.

B. Often times, a person contacts one franchise office in regard to the purchase of certain real estate, believing he is dealing with a national chain of real estate licensees. At a later date, he may contact another of the franchise offices, and at that time, possibly enter into a contract for purchase of property in which he showed an interest to the licensee initially contacted. This licensee could then bring suit against the licsensee who finalized the transaction, regarding commission earned and the public then becomes involved in litigation through confusion as to the actual relationship between the franchisee and the franchisor.

C. There are times when a problem arises in the course of a real estate transaction. The person doing business with a franchisee is often confused by the fact that he cannot take his problem to another franchisee for advice, etc., as he finds that although franchised by the same franchisor, the two broker agents are in no way connected as to business matters. They are, in fact, two absolutely separate entities. The person, frustrated, turns to the franchisor and finds that the franchisor has no obligations as to the local franchisees real estate business. The franchisor is not a Montana Real Estate Licensee, merely a real estate marketing corporation,an advertizer of real estate licensees.

D. The manner in which the franchisor and franchisee present advertising to the general public lends to the confusion of the public regarding identification of the local real estate licensees. Therefore, in the interest of the protection of the public, and to avoid confusion which arises in that public, the Board of Real Estate has proposed the above stated rules.

4. All interested persons will be afforded opportunity to make oral presentation as to their comments on the proposed

ruling at the hearing. Written statements will be received in addition to or in lieu of oral testimony and made a part of the record of the hearing for the Board's review. The Board will receive written comments made to the Board at any time prior to, or at the hearing. Such comments should be directed to the Board of Real Estate, Lalonde Building, Helena, Montana 59601.

5. The hearing will be conducted by the Board of Real Estate or its designee.

6. The authority of the Board to make the proposed adoption is based on Section 66-1927 R.C.M. 1947.

DATED this 15th day of June, 1978.

BOARD OF REAL ESTATE
ROBERT T. CUMMINS
CHAIRMAN

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

Certified to the Secretary of State 6-15, 1978.

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

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

TO: All Interested Persons

1. On July 13, 1978, at 9:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule ARM 46-2.10(18)-S11440, pertaining to Medical Assistance, Services provided, Amount, Duration, to be enacted and to be effective on July 1, 1978. Interested persons may submit their data, views or arguments, orally or in writing, at this hearing. Written data, views or arguments may be submitted to Richard Weber, P.O. Box 4210, Helena, Montana 59601, any time before July 21, 1978.

2. The Department intends to amend rule ARM 46-2.10(18)-S11440(1)(g) as follows:

(i) Each patient must be placed in a nursing home under the direction and care of a physician. ~~A level of care evaluation Form EA-9 must be completed by the admitting physician and a social information evaluation prepared by a social worker so that the valid classification of the patient in the nursing home may be determined~~. Applicants for nursing home admission who are Medicaid recipients or potential Medicaid recipients and persons making applications for Medicaid while residents of nursing homes shall be reviewed by a pre-admission screening team.

(aa) Potential medicaid recipients means those persons who may reasonably be expected to apply for medicaid within six (6) months.

(ab) Pre-admission screening means evaluation of the applicant's social, medical and emotional needs and a determination of where those needs can most appropriately be met.

(ac) Screening teams shall consist of Montana Foundation for Medical Care physican advisors and nurse coordinators in addition to Social and Rehabilitation Services medical social workers.

(aaa) The physician advisor shall act on recommendation of the nurse coordinator and medical social workers, and negotiate contested decisions with attending physicians. In cases of dispute, the physician advisor's decision shall be final and binding for payment purposes.

(aab) Nurse coordinators shall make the initial evaluation of the applicant's medical needs and in conjunction with the mecical social workers shall determine where the client can most appropriately be cared for.

(aac) The medical social workers shall make the initial evaluation of the applicant's social needs and in conjunction with the nurse coordinator shall determine where the applicant can most appropriately be cared for.

(aad) The recommendation of the medical social worker and the nurse coordinator will include a plan for alternate care where appropriate. The plan will specify what resources will be used for alternate care and will indicate how the applicants's social, medical, and environmental needs are being met. In the case of Medicaid recipients in nursing homes, an alternate care plan shall not be approved if it will cost more than eighty per cent (80%)of the Cost of nursing home care being paid at the time of the screening team's evaluation.

(aae) The decisions of the screening team may be appealed by the recipient, the recipient's representative, the attending physician or the Department by requesting a hearing before a hearing officer appointed and compensated by the Montana Foundation for Medical Care. The decision of that officer may be appealed to a Review Board appointed by the MFMC, which shall be constituted, of at least, three members whose terms shall not be less than one year nor greater than three years. All proceedings conducted under this paragraph must meet the procedural standards prescribed by Section 82-4209 through 82-4216 RCM 1947 and the provisions of ARM 46-2.2(2)-P210 through P2070 or Federal Administrative Procedures Act, 5 USC 701 et. seq, and regulations adopted by HEW governing PSRO appeals procedures. The decision of the hearing officer, if not appealed, or the Review Board upon appeal shall be a final and binding Administrative decision for purposes of judicial review pursuant to Section 87-4216 RCM 1947.

(ad) The screening team shall also be actively involved in discharge planning for nursing home residents and shall have access to the resident's medical record in the long term care facility.

(ae) Hospitalized Medicaid recipients and potential recipients being considered for nursing home placement upon discharge from the hospital shall be reviewed by the screening team before placement is made and payments are made in their behalf. If the hospital provides Medical Social Services, the screening teams will coordinate their activities with the hospital's social work staff in such a way as to supplement services already provided and to avoid duplication of effort.

(af) Nursing home administrators shall be responsible to request pre-admission screening of medicaid recipients or potential recipients for placement in their

respective nursing homes.

(ag) Referral for pre-admission screening may be made by the attending physician or the county welfare office.

(iv) Reimbursement ~~will~~ shall be effective on the date the ~~nurse-in-the-facility-signs-the-evaluation.~~ Client enters the nursing home after certification by the screening team. There can be no ninety day prior authorization unless the recipient has been determined eligible and in need of either skilled nursing care or intermediate care during the prior period. ~~An-evaluation should-be-completed-on-the-date-of-admittance-or-transfer if-at-all-possible-to-prevent-time-lapse-in-payment.~~ Reimbursement shall in no case be retroactive unless more than seven (7) days have passed from the time the facility or patient requests certification until it is completed.

(v) ~~All-recipients-will-be-evaluated-by-a-utilization-review-team-or-committee-to-determine-that-they-are properly-classified~~. All nursing home resident's who are recipients or potential recipients of medicaid shall be evaluated on a continuing basis by a utilization review team or committee to determine that they are receiving appropriate care.

(vi) The ~~various~~ levels of care which may be provided under the medical assistance program in those homes which meet the licensing requirements of the State Department of Health for the particular level of care will be:

(aa) Skilled nursing care which is a wide range of services including the availability on 24 hour a day basis the services of qualified nursing personnel who extend such services under the direction of the attending physician and the supervision of the supervising nurse at the facility. Based on the physician's diagnosis and orders, the nurse assesses the patient's needs, designs a plan for the nursing care, and plans responsibility for nursing care given by others when adjudged adviseable.

(ab) Intermediate care A is that service extended to those patients not requiring 24 hour nursing service, but who do need limited nursing and are receiving care in a facility where there is a nurse on duty at least one eight-hour shift and nursing services available on call during the remaining period of the day. Intermediate care A is based on the evaluation of the patient's needs as prescribed ~~in-the-EA-9,-level-of-Care-Evaluation,~~ by the attending physician and the nurse in charge of services according to the guidelines developed by the department.

~~(ae)-Intermediate-care-B-are-those-personal-services provided-to-patients-who-need-no-nursing-service.--These would-include-shelter-and-laundry-provided-the-persons who-are-not-in-need-of-nursing-service-but-by-reason-of nursing-service-but-by-reason-of-age,-illness,-disease,~~

~~injury, convalescence, or physical or mental infirmities are unable to care for themselves and thus require intermediate care services from others in a facility which is licensed by the State Department of Health. It may include such personal services as assistance with eating, walking, dressing, toilet, bathing, preparation of special diets and supervision of medication which can be self administered.~~

(aaa) There is no limit to the length of stay available for nursing home care so long as it is considered necessary by the attending physician, to be in the patient's best interests and there is a valid evaluation as determined by the utilization review team or committee.

(aab) No payment or subsidy will be made to a nursing home for holding a bed while the recipient is receiving medical services elsewhere, such as in a hospital except in a situation where a nursing home is full and has a waiting list of potential residents. In this exceptional instance, a payment may be made for holding a bed while the resident is temporarily receiving care in a hospital, is expected to return to the nursing home, and the cost of holding the nursing home bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate nursing home bed would otherwise become available. Furthermore, payment in this exceptional instance, may be made only upon approval from the Director of the Department or his designee.

3. The rationale for this request for amendment is to clarify the scope and nature of services provided by the Department in the Medicaid program.

4. Richard Weber, P.O. Box 4210, Helena, Montana, 59601, has been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

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

Director, Social and Rehabilitation Servides

Certified to the Secretary of State June 15, 1978.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA

In the matter of the adoption of rules on hearing procedures for special education applications to the Superintendent of Public Instruction.	) NOTICE OF PROPOSED ADOPTION) OF RULES ON HEARING PROCE-) DURES FOR SPECIAL EDUCATION) APPLICATIONS TO THE SUPER-) INTENDENT OF PUBLIC INSTRUC-) TION. NO PUBLIC HEARING) CONTEMPLATED.

TO: All Interested Persons:

1. On July 27, 1978, the Superintendent of Public Instruction proposes to adopt a rule on hearing procedures for special education applications to the Superintendent of Public Instruction.

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:

48-2.18(42)-P18780. HEARING ON APPLICATIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) Scope. A parent or board of trustees may initiate a hearing when the Superintendent of Public Instruction disapproves an application for special education made pursuant to title 75, chapter 78, of the Revised Codes of Montana, 1947, which affects the identification, evaluation, or educational placement of a handicapped child or which affects the provision of a free appropriate public education to 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 therefore and the names and addresses of the parties, with the Superintendent of Public Instruction within thirty (30) days after the date of the disapproval.

(3) Notification of Access of Information and Assistance. (a) Upon receipt of a request for hearing, the Superintendent of Public Instruction 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 of the parent's residence.

(b) Upon request, a parent shall be informed by the Superintendent of Public Instruction of any free or low-cost legal and other relevant services available in the area of the parent's residence.

(4) Conference and Informal Disposition. The Superintendent of Public Instruction shall make a reasonable effort to schedule conferences with the parties for the purpose of resolving differences about the application without a hearing.

(5) Notice of Hearing. (a) The Superintendent of Public Instruction shall schedule a hearing at a time and place which is reasonably convenient to the parent and child.

(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 Superintendent of Public Instruction 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 5 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 the parent shall be provided throughout the hearing at public expense.

(g) The burden of proof initially shall be upon the party requesting the hearing.

(9) Timeliness. Not later than 45 days after the request for a hearing is filed with the Superintendent of Public Instruction, plus specific time extensions granted at the request of a party and delays attributable to a parent, 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 right to seek judicial review or bring a civil action is sent by certified mail to each party. 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) Hearing Officer. Upon filing a request for hearing, the Superintendent of Public Instruction and the parties shall select an impartial hearing officer in the same manner as provided in Rule 48-2.18(42)-P18770(1), (3), (4), and (5).

(11) 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.

(12) 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)

4. The Office of Public Instruction is proposing this rule 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 procedures for special education applications to the Superintendent of Public Instruction.

5. Interested persons may present their data, views, arguments or requests for oral hearing concerning the proposed adoption in writing to the Superintendent of Public Instruction, Capitol Building, Helena, Montana 59601, not later than July 21, 1978.

6. The authority of the agency to make the proposed rule is based on section 75-7802, R.C.M. 1947.

Alec Thomas, Deputy

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 moving and relocation expenses of eligible State employees	NOTICE OF ADOPTION OF RULES ARM 2-2.14(36)-S14590 THROUGH 2-2.14(36)-S14630 PERTAINING TO MOVING AND RELOCATION EXPENSES

TO: All Interested Persons

1. On April 24, 1978, the Department of Administration published notice of the proposed adoption of rules concerning moving and relocation expenses of eligible State employees at pages 442-444 of the Montana Administrative Register, issue number 4.

2. The agency has adopted the rule with the following changes: 2-2.14(36)-S14610 (Rule III) Policy, Section (a)(i) 3rd and 4th sentences will read as follows: The employee must obtain at least two ~~bids~~ estimates except where there is no choice of commercial moving companies. These ~~bids~~ estimates must be submitted to the Director or designated authority for approval prior to moving.

   The agency has numbered the Rule ARM 2-2.14(36)-S14590 through 2-2.14(36)-S14630.

3. One suggestion was received from John Northy of the Legislative Auditor's Office for changing the word bids to estimates as a more accurate term. This suggestion was accepted and included in the final rules.

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State June 13, 1978

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

In the matter of the adoption) of a rule relating to life) insurance solicitation.)	NOTICE OF ADOPTION OF A RULE ON LIFE INSURANCE SOLICITATION

TO: All interested persons:

1. On February 15, 1978, The Commissioner of Insurance of the State of Montana published notice for a public hearing for the adoption of a rule concerning Life Insurance Solicitation at page 155 of the 1978 Montana Administrative Register, issue number 2.

2. The agency has adopted the rule with minor editorial changes but no significant changes in the substance. The entire text of this rule, as adopted, follows below.

3. Consideration was given to the comments and testimony received at the hearing. The Commissioner of Insurance has adopted the rule because the purpose of the rule is to require insurers to deliver to prospective buyers of life insurance, information that will improve the buyer's ability to select the most appropriate plan of life insurance for his needs, improve the buyer's understanding of the basic features of the policy that has been purchased or that is under consideration and improve the buyer's ability to evaluate the relative costs of similar plans of life insurance.

The proposed rule is patterned after the Model Life Insurance Solicitation Regulation of the National Association of Insurance Commissioners, and applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This rule will also apply to any issuer of life insurance contracts, with certain specific exceptions.

The adoption of this rule is to become effective six months after the publication of this notice in the Montana Administrative Register.

James A Cheetham
Assistant Chief Deputy
Commissioner of Insurance

Certified to the Secretary of State June 15, 1978.

Sub-Chapter 3

Life Insurance Solicitation

6-2.6(3)-S685 LIFE INSURANCE SOLICITATION: AUTHORITY

(1) This rule is adopted and promulgated by the Commissioner of Insurance pursuant to Section 40-2710 R.C.M. 1947.

(2) PURPOSE

(a) The purpose of this regulation is to require insurors to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for his needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

(b) This regulation does not prohibit the use of additional material which is not in violation of this regulation or any other Montana statute or regulation.

(3) SCOPE

(a) Except as hereafter exempted, this regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies.

(b) Unless otherwise specifically included, this regulation shall not apply to:

(i) Annuities.

(ii) Credit life insurance.

(iii) Group life insurance.

(iv) Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA).

(v) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(4) DEFINITIONS. For the purposes of this regulation, the following definitions shall apply:

(a) BUYER'S GUIDE. A Buyer's Guide is a document which contains, and is limited to, the language contained in the Appendix to this regulation or language approved by The Commissioner of Insurance.

(b) CASH DIVIDEND. A Cash Dividend is the current illustrated dividend which can be applied toward payment of the gross premium.

(c) EQUIVALENT LEVEL ANNUAL DIVIDEND. The Equivalent Level Annual Dividend is calculated by applying the following steps:

(i) Accumulate the annual cash dividends at five percent interest compounded annually to the end of the tenth and

twentieth policy years.

(ii) Divide each accumulation of Step (i) by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in Step (i) over the respective periods stipulated in Step (i). If the period is ten years, the factor is 13.207 and if the period is twenty years, the factor is 34.719.

(iii) Divide the results of Step (ii) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Equivalent Level Annual Dividend.

(d) EQUIVALENT LEVEL DEATH BENEFIT. The Equivalent Level Death Benefit of a policy or term life insurance rider is an amount calculated as follows:

(i) Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten and twenty years at five percent interest compounded annually to the end of the tenth and twentieth policy years respectively.

(ii) Divide each accumulation of Step (i) by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step (i) over the respective periods stipulated in Step (i). If the period is ten years, the factor is 13.207 and if the period is twenty years, the factor is 34.719.

(e) GENERIC NAME. Generic Name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

(f) LIFE INSURANCE COST INDEXES.

(i) LIFE INSURANCE SURRENDER COST INDEX. The Life Insurance Surrender Cost Index is calculated by applying the following steps:

(aa) Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years.

(bb) For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at five percent interest compounded annually to the end of the period selected and add this sum to the amount determined in Step (aa).

(cc) Divide the result of Step (bb) (Step (aa) for guaranteed cost policies) by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step (bb) (Step (aa) for guaranteed cost policies) over the respective periods stipulated in Step (aa). If the period is ten years, the factor is 13.207 and if the period is twenty years, the factor is 34.719.

(dd) Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at five percent interest compounded annually to the end of the period stipulated in Step (aa) and dividing the result by the

respective factors stated in Step (cc) (this amount is the annual premium payable for a level premium plan).

(ee) Subtract the result of Step (cc) from Step (dd).

(ff) Divide the result of Step (ee) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Life Insurance Surrender Cost Index.

(ii) LIFE INSURANCE NET PAYMENT COST INDEX. The Life Insurance Net Payment Cost Index is calculated in the same manner as the comparable Life Insurance Cost Index except that the cash surrender value and any terminal dividend are set at zero.

(g) POLICY SUMMARY. For the purposes of this regulation, Policy Summary means a written statement describing the elements of the policy including but not limited to:

(i) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.

(ii) The name and address of the insurance agent, or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary.

(iii) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(iv) The Generic Name of the basic policy and each rider.

(v) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the years for which Life Insurance Cost Indexes are displayed and at least one age from sixty through sixty-five or maturity whichever is earlier:

(aa) The annual premium for the basic policy.

(bb) The annual premium for each optional rider.

(cc) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(dd) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(ee) Cash Dividends payable at the end of the year with values shown separately for the basic policy and each rider. (Dividends need not be displayed beyond the twentieth policy year.)

(ff) Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

(vi) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy

loan interest rate is variable, the Policy Summary includes the maximum annual percentage rate.

(vii) Life Insurance Cost Indexes for ten and twenty years but in no case beyond the premium paying period. Separate indexes are displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits nor for basic policies or optional riders covering more than one life.

(viii) The Equivalent Level Annual Dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which Life Insurance Cost Indexes are displayed.

(ix) A Policy Summary which includes dividends shall also include a statement that dividends are based on the company's current dividend scale and are not guaranteed in addition to a statement in close proximity to the Equivalent Level Annual Dividend as follows: An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide.

(x) A statement in close proximity to the Life Insurance Cost Indexes as follows: An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide.

(xi) The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item (v) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.

(5) DISCLOSURE REQUIREMENTS.

(a) The insurer shall provide, to all prospective purchasers, a Buyer's Guide and a Policy Summary prior to accepting the applicant's initial premium or premium deposit, unless the policy for which application is made contains an unconditional refund provision of at least ten days or unless the Policy Summary contains such an unconditional refund offer, in which event the Buyer's Guide and Policy Summary must be delivered with the policy or prior to delivery of the policy.

(b) The insurer shall provide a Buyer's Guide and a Policy Summary to any prospective purchaser upon request.

(c) In the case of policies whose Equivalent Level Death Benefit does not exceed $5,000, the requirement for providing a Policy Summary will be satisfied by delivery of a written statement containing the information described in (4) (g), items (ii), (iii), (iv), (v)(aa), (v)(bb),(v)(cc), (vi), (vii), (x) and (xi).

(6) GENERAL RULES.

(a) Each insurer shall maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use pursuant to this regulation. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.

(b) An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which he is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.

(c) Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

(d) Any reference to policy dividends must include a statement that dividends are not guaranteed.

(e) A system or presentation which does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such a system may be used for the purpose of demonstrating the cash-flow pattern of a policy if such presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.

(f) A presentation of benefits shall not display guaranteed and non-guaranteed benefits as a single sum unless they are shown separately in close proximity thereto.

(g) A statement regarding the use of the Life Insurance Cost Indexes shall include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

(h) A Life Insurance Cost Index which reflects dividends or an Equivalent Level Annual Dividend shall be accompanied by a statement that it is based on the company's current dividend scale and is not guaranteed.

(i) For the purposes of this regulation, the annual premium for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

(7) FAILURE TO COMPLY. Failure of an insurer to provide or deliver a Buyer's Guide, or a Policy Summary as provided in

(5) shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy.

(8) EFFECTIVE DATE. This rule shall apply to all solicitations of life insurance which commence on or after six months following adoption by the Insurance Commissioner of the state of Montana.

APPENDIX

LIFE INSURANCE BUYER'S GUIDE

The face page of the Buyer's Guide shall read as follows:

LIFE INSURANCE BUYER'S GUIDE

This guide can show you how to save money when you shop for life insurance. It helps you to:

----Decide how much life insurance you should buy,

----Decide what kind of life insurance policy you need, and

----Compare the cost of similar life insurance policies.

Prepared by the National Association of Insurance Commissioners

Reprinted by (Company Name)
(Month and year of printing)

The Buyer's Guide shall contain the following language at the bottom of page 2:

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments to coordinate insurance laws for the benefit of all consumers. You are urged to use this Guide in making a life insurance purchase.

THIS GUIDE DOES NOT ENDORSE ANY COMPANY OR POLICY.

The remaining text of the Buyer's Guide shall begin on page 3 as follows:

BUYING LIFE INSURANCE

When you buy life insurance, you want a policy which fits your needs without costing too much. Your first step is to decide how much you need, how much you can afford to pay and the kind of policy you want. Then, find out what various companies charge for that kind of policy. You can find important differences in the cost of life insurance by using the life insurance cost indexes which are described in this guide. A good life

insurance agent or company will be able and willing to help you with each of these shopping steps.

If you are going to make a good choice when you buy life insurance, you need to understand which kinds are available. If one kind does not seem to fit your needs, ask about the other kinds which are described in this guide. If you feel that you need more information than is given here, you may want to check with a life insurance agent or company or books on life insurance in your public library.

CHOOSING THE AMOUNT

One way to decide how much life insurance you need is to figure how much cash and income your dependents would need if you were to die. You should think of life insurance as a source of cash needed for expenses of final illnesses, paying taxes, mortgages or other debts. It can also provide income for your family's living expenses, educational costs and other future expenses. Your new policy should come as close as you can afford to making up the difference between (1) what your dependents would have if you were to die now, and (2) what they would actually need.

CHOOSING THE RIGHT KIND

All life insurance policies agree to pay an amount of money if you die. But all policies are not the same. There are three basic kinds of life insurance.

1. Term insurance
2. Whole life insurance
3. Endowment insurance

Remember, no matter how fancy the policy title or sales presentation might appear, all life insurance policies contain one or more of the three basic kinds. If you are confused about a policy that sounds complicated, ask the agent or company if it combines more than one kind of life insurance. The following is a brief description of the three basic kinds:

Term Insurance

Term insurance is death protection for a "term" of one or more years. Death benefits will be paid only if you die within that term of years. Term insurance generally provides the largest immediate death protection for your premium dollar.

Some term insurance policies are "renewable" for one or more additional terms even if your health has changed. Each time you renew the policy for a new term, premiums will be higher. You should check the premiums at older ages and the length of time the policy can be continued.

Some term insurance policies are also "convertible". This means that before the end of the conversion period, you may trade the term policy for a whole life or endowment insurance policy even if you are not in good health. Premiums for the

new policy will be higher than you have been paying for the term insurance.

Whole Life Insurance

Whole life insurance gives death protection for as long as you live. The most common type is called "straight life" or "ordinary life" insurance, for which you pay the same premiums for as long as you live. These premiums can be several times higher than you would pay initially for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term insurance policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher than for ordinary life insurance since the premium payments are squeezed into a shorter period.

Although you pay higher premiums, to begin with, for whole life insurance than for term insurance, whole life insurance policies develop "cash values" which you may have if you stop paying premiums. You can generally either take the cash, or use it to buy some continuing insurance protection. Technically speaking, these values are called "nonforfeiture benefits". This refers to benefits you do not not lose (or "forfeit") when you stop paying premiums. The amount of these benefits depends on the kind of policy you have, its size, and how long you have owned it.

A policy with cash values may also be used as collateral for a loan. If you borrow from the life insurance company, the rate of interest is shown in your policy. Any money which you owe on a policy loan would be deducted from the benefits if you were to die, or from the cash value if you were to stop paying premiums.

Endowment Insurance

An endowment insurance policy pays a sum or income to you-the policyholder-if you live to a certain age. If you were to die before then, the death benefit would be paid to your beneficiary. Premiums and cash values for endowment insurance are higher than for the same amount of whole life insurance. Thus endowment insurance gives you the least amount of death protection for your premium dollar.

FINDING A LOW COST POLICY

After you have decided which kind of life insurance fits your needs, look for a good buy. Your chances of finding a good buy are better if you use two types of index numbers that have been developed to aid in shopping for life insurance. One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index". It will be worth your time to try to understand how these indexes are used, but in any event,

use them only for comparing the relative cost of similar policies. LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS.

What is Cost?

"Cost" is the difference between what you pay and what you get back. If you pay a premium for life insurance and get nothing back, your cost for the death protection is the premium. If you pay a premium and get something back later on, such as a cash value, your cost is smaller than the premium.

The cost of some policies can also be reduced by dividends; these are called "participating" policies. Companies may tell you what their current dividends are, but the size of future dividends is unknown today and cannot be guaranteed. Dividends actually paid are set each year by the company.

Some policies do not pay dividends. These are called "guaranteed cost" or "non-participating" policies. Every feature of a guaranteed cost policy is fixed so that you know in advance what your future cost will be.

The premiums and cash values of a participating policy are guaranteed, but the dividends are not. Premiums for participating policies are typically higher than for guaranteed cost policies, but the cost to you may be higher or lower, depending on the dividends actually paid.

What Are Cost Indexes?

In order to compare the cost of policies, you need to look at:

1. Premiums
2. Cash values
3. Dividends

Cost indexes use one or more of these factors to give you a convenient way to compare relative costs of similar policies. When you compare costs, an adjustment must be made to take into account that money is paid and received at different times. It is not enough to just add up the premiums you will pay and to subtract the cash values and dividends you expect to get back. These indexes take care of the arithmetic for you. Instead of having to add, subtract, multiply and divide many numbers yourself, you just compare the index numbers which you can get from life insurance agents and companies:

1. LIFE INSURANCE SURRENDER COST INDEX-- This index is useful if you consider the level of the cash values to be of primary importance to you. It helps you compare costs if at some future point in time, such as 10 or 20 years, you were to surrender the policy and take its cash value.

2. LIFE INSURANCE NET PAYMENT COST INDEX-- This index is useful if your main concern is the benefits that are to be paid at your death and if the level of cash values is of secondary importance to you. It helps you compare costs at some future point in time, such as 10 or 20 years, if you continue paying

premiums on your policy and do not take its cash value.

***

There is another number called the Equivalent Level Annual Dividend. It shows the part dividends play in determining the cost index of a participating policy. Adding a policy's Equivalent Level Annual Dividend to its cost index allows you to compare total costs of similar policies before deducting dividends. However, if you make any cost comparisons of a participating policy with a non-participating policy, remember that the total cost of the participating policy will be reduced by dividends, but the cost of the non-participating policy will not change.

How Do I Use Cost Indexes?

The most important thing to remember when using cost indexes is that a policy with a small index number is generally a better buy than a comparable policy with a larger index number. The following rules are also important:

(1) Cost comparisons should only be made between similar plans of life insurance. Similar plans are those which provide essentially the same basic benefits and require premium payments for approximately the same period of time. The closer policies are to being identical, the more reliable the cost comparison will be.

(2) Compare index numbers only for the kind of policy, for your age and for the amount you intend to buy. Since no one company offers the lowest cost for all types of insurance at all ages and for all amounts of insurance, it is important that you get the indexes for the actual policy, age and amount which you intend to buy. Just because a "shopper's guide" tells you that one company's policy is a good buy for a particular age and amount, you should not assume that all of that company's policies are equally good buys.

(3) Small differences in index numbers could be offset by other policy features, or differences in the quality of service you may expect from the company or its agent. Therefore, when you find small differences in cost indexes, your choice should be based on something other than cost.

(4) In any event, you will need other information on which to base your purchase decision. Be sure you can afford the premiums, and that you understand its cash values, dividends and death benefits. You should also make a judgement on how well the life insurance company or agent will provide service in the future, to you as a policyholder.

(5) These life insurance cost indexes apply to new policies and should not be used to determine whether you should drop a policy you have already owned for awhile, in favor of a new one. If such a replacement is suggested, you should ask for information from the company which issued the old policy

before you take action.

IMPORTANT THINGS TO REMEMBER - A SUMMARY

The first decision you must make when buying a life insurance policy is choosing a policy whose benefits and premiums most closely meet your needs and ability to pay. Next, find a policy which is also a relatively good buy. If you compare Surrender Cost Indexes and Net Payment Cost Indexes of similar competing policies, your chances of finding a relatively good buy will be better than if you do not shop. REMEMBER, LOOK FOR POLICIES WITH LOWER COST INDEX NUMBERS. A good life insurance agent can help you to choose the amount of life insurance and kind of policy you want and will give you cost indexes so that you can make cost comparisons of similar policies.

Don't buy life insurance unless you intend to stick with it. A policy which is a good buy when held for 20 years can be very costly if you quit during the early years of the policy. If you surrender such a policy during the first few years, you may get little or nothing back and much of your premium may have been used for company expenses.

Read your new policy carefully, and ask the agent or company for an explanation of anything you do not understand. Whatever you decide now, it is important to review your life insurance program every few years to keep up with changes in your income and responsibilities. (History: Sec. 40-2710, R.C.M. 1947; IMP Sec. 40-3502.1(1), R.C.M. 1947; NEW 1978 MAR p. 155-156, Eff. 12/15/78.)

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

In the matter of the adoption and amendment of rules relating to credit life and disability insurance.	))))	NOTICE OF ADOPTION AND AMENDMENT OF RULES FOR CREDIT LIFE AND DISABILITY INSURANCE

TO: All interested persons:

1. On February 15, 1978, The Commissioner of Insurance of the State of Montana published notice for a public hearing for adoption and amendment of rules concerning Credit Life and Disability Insurance at page 159 of the 1978 Montana Administrative Register issue number 2.

2. The agency has adopted and amended the rules with minor editorial changes but no significant changes in the substance, as follows:

INSURANCE DEPARTMENT

Sub-Chapter 10

Credit Life and Disability Insurance

6-2.6(10)-S790 CREDIT LIFE INSURANCE--ACCEPTABLE RATES

(1) Except as may otherwise be provided in this sub-chapter, the following rates for decreasing term life insurance may be considered "prima facie acceptable rates" for purposes of section 40-4210 (2), R.C.M. 1947. Rates which are filed by any company for the indicated coverage will be considered acceptable without substantiating data if they do not exceed these premium rates:

(a) Single premium life insurance rates per one hundred ($100) of initial indebtedness repayable in twelve (12) equal monthly installments during the period of coverage:

(i) Single life - $.60

(ii) Joint life - $.90

(b) Monthly premium per one thousand dollars ($1,000) of outstanding balance:

(i) Single life - $.95

(ii) Joint life - $1.45

(2) Where credit life insurance on a single indebtedness is provided on two lives, it shall mean insurance on spouse, family member or business partners only, where both are jointly and severally liable for the debt. This provision prohibits the writing of such insurance on more than two lives on the same indebtedness.

(3) An insurer may at any time charge a rate which is less than the basic maximum rate set forth above.

(4) Single premium rates for indebtedness repayable in installments other than twelve (12) in number shall be one-

twelfth (1/12) of the above premium rate multiplied by the number of full months in the period of indebtedness. Premium rates for credit life insurance not covered under subsection (1) of this rule shall be the actuarial equivalent of rates established by that subsection. (History: Sections 40-4215, Imp. 40-4210 (2), R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75; and 1978 MAR p. 159. Eff. 10/15/78).

6-2.6(10)-S800 LIMITATION ON PRESUMPTION OF REASONABLENESS. The rates provided by MAC 6-2.6(6)-S790 are presumed to produce reasonable benefits in relation to premium only if:

(1) The credit life insurance contract contains no exclusion other than for suicide committed within two years of the effective date of the insurance; and

(2) There are no age restrictions, or the only restrictions are those debtors not older than the applicable age limit, which shall not be less than attained age sixty-five (65) years if - such limit applies to the age when the insurance attaches, or not less than attained age sixty-six (66) if such limit applies to the age on the scheduled maturity date of the debt, as the insurer may elect. However, if a policy is issued beyond the age limits established in the policy due to misstatement of age of the debtor, subsection (3) shall apply.

(3) If a debtor exceeds the eligibility age, has correctly stated his age in writing, or otherwise, and a certificate or policy is issued to him in error, the insurer has the right within sixty (60) days from the date of the loan or extension of credit to terminate coverage and refund any premiums paid. Failure on the part of the insurer to act in a timely manner will subject it to the full risk regardless of the age.

If the debtor dies within the sixty (60) day period before the insurer terminates coverage, the insurer will be liable for the amount of the debtor's insurance at death.

(4) That the contract may require submission of evidence of insurability. (History: Sections 40-4215, Imp. 40-4210 (2), R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75; AMD 1978 MAR p. 159, Eff. 10/15/78.)

6-2.6(10)-S810 CREDIT DISABILITY INSURANCE--ACCEPTABLE RATES. (1) Except as may otherwise be provided in this subchapter, the rates provided in this rule for credit disability insurance may be considered as "prima facie acceptable rates" for the purposes of section 40-4210 (2), R.C.M. 1947. Rates which are filed by any company for the indicated coverage will be considered acceptable without substantiating data if they do not exceed these premium rates.

(2) If premiums are paid in one sum for the entire duration of the indebtedness, the following rates for one hundred dollars ($100.) of initial indebtedness repayable in the indicated number of installments are applicable.

No. of Months in which indebtedness is repayable	Nonretroactive Benefits 14-day Nonretroactive	Nonretroactive Benefits 30-day Nonretroactive	Retroactive Benefits 14-day Retroactive	Retroactive Benefits 30-day Retroactive
6 or less	$1.00	$ .40	$1.80	$1.30
7	1.07	.47	1.87	1.37
8	1.13	.53	1.93	1.43
9	1.20	.60	2.00	1.50
10	1.27	.67	2.07	1.57
11	1.33	.73	2.13	1.63
12	1.40	.80	2.20	1.70
13	1.47	.87	2.27	1.77
14	1.53	.93	2.33	1.83
15	1.60	1.00	2.40	1.90
16	1.67	1.07	2.47	1.97
17	1.73	1.13	2.53	2.03
18	1.80	1.20	2.60	2.10
19	1.87	1.27	2.67	2.17
20	1.93	1.33	2.73	2.23
21	2.00	1.40	2.80	2.30
22	2.07	1.47	2.87	2.37
23	2.13	1.53	2.93	2.43
24	2.20	1.60	3.00	2.50
25	2.27	1.67	3.07	2.57
26	2.33	1.73	3.13	2.63
27	2.40	1.80	3.20	2.70
28	2.47	1.87	3.27	2.77
29	2.53	1.93	3.33	2.83
30	2.60	2.00	3.40	2.90
31	2.67	2.07	3.47	2.97
32	2.73	2.13	3.52	3.03
33	2.80	2.20	3.60	3.10
34	2.87	2.27	3.67	3.17
35	2.93	2.33	3.73	3.23
36	3.00	2.40	3.80	3.30
37	3.04	2.44	3.84	3.34
38	3.08	2.48	3.88	3.38
39	3.12	2.52	3.92	3.42
40	3.17	2.57	3.97	3.47
41	3.21	2.61	4.01	3.51
42	3.25	2.65	4.05	3.55
43	3.29	2.69	4.09	3.59
44	3.33	2.73	4.13	3.63
45	3.37	2.77	4.17	3.67
46	3.42	2.82	4.22	3.72
47	3.46	2.86	4.26	3.76
48	3.50	2.90	4.30	3.80
49	3.53	2.93	4.33	3.83
50	3.57	2.97	4.37	3.87

No. of Months in which indebtedness is repayable	Nonretroactive Benefits 14-day Nonretroactive	Nonretroactive Benefits 30-day Nonretroactive	Retroactive Benefits 14-day Retroactive	Retroactive Benefits 30-day Retroactive
51	$3.60	$3.00	$4.40	$3.90
52	3.63	3.03	4.43	3.93
53	3.67	3.07	4.47	3.97
54	3.70	3.10	4.50	4.00
55	3.73	3.13	4.53	4.03
56	3.77	3.17	4.57	4.07
57	3.80	3.20	4.60	4.10
58	3.83	3.23	4.63	4.13
59	3.87	3.27	4.67	4.17
60	3.90	3.30	4.70	4.20
61	3.93	3.33	4.73	4.23
62	3.97	3.37	4.77	4.27
63	4.00	3.40	4.80	4.30
64	4.03	3.43	4.83	4.33
65	4.07	3.47	4.87	4.37
66	4.10	3.50	4.90	4.40
67	4.13	3.53	4.93	4.43
68	4.17	3.57	4.97	4.47
69	4.20	3.60	5.00	4.50
70	4.23	3.63	5.03	4.53
71	4.27	3.67	5.07	4.57
72	4.30	3.70	5.10	4.60
73	4.33	3.73	5.13	4.63
74	4.37	3.77	5.17	4.67
75	4.40	3.80	5.20	4.70
76	4.43	3.83	5.23	4.73
77	4.47	3.87	5.27	4.77
78	4.50	3.90	5.30	4.80
79	4.53	3.93	5.33	4.83
80	4.57	3.97	5.37	4.87
81	4.60	4.00	5.40	4.90
82	4.63	4.03	5.43	4.93
83	4.67	4.07	5.47	4.97
84	4.70	4.10	5.50	5.00
85	4.73	4.13	5.53	5.03
86	4.77	4.17	5.57	5.07
87	4.80	4.20	5.60	5.10
88	4.83	4.23	5.63	5.13
89	4.87	4.27	5.67	5.17
90	4.90	4.30	5.70	5.20
91	4.93	4.33	5.73	5.23
92	4.97	4.37	5.77	5.27
93	5.00	4.40	5.80	5.30
94	5.03	4.43	5.83	5.33
95	5.07	4.47	5.87	5.37
96	5.10	4.50	5.90	5.40
97	5.13	4.53	5.93	5.43

	Nonretroactive Benefits		Retroactive Benefits	
No. of Months in which indebtedness is repayable	14-day Nonretroactive	30-day Nonretroactive	14-day Retroactive	30-day Retroactive
98	$5.17	$4.57	$5.97	$5.47
99	5.20	4.60	6.00	5.50
100	5.23	4.63	6.03	5.53
101	5.27	4.67	6.07	5.57
102	5.30	4.70	6.10	5.60
103	5.33	4.73	6.13	5.63
104	5.37	4.77	6.17	5.67
105	5.40	4.80	6.20	5.70
106	5.43	4.83	6.23	5.73
107	5.47	4.87	6.27	5.77
108	5.50	4.90	6.30	5.80
109	5.53	4.93	6.33	5.83
110	5.57	4.97	6.37	5.87
111	5.60	5.00	6.40	5.90
112	5.63	5.03	6.43	5.93
113	5.67	5.07	6.47	5.97
114	5.70	5.10	6.50	6.00
115	5.73	5.13	6.53	6.03
116	5.77	5.17	6.57	6.07
117	5.80	5.20	6.60	6.10
118	5.83	5.23	6.63	6.13
119	5.87	5.27	6.67	6.17
120	5.90	5.30	6.70	6.20

(3) Premiums payable other than on a single premium basis or for benefits on a basis different than illustrated above, shall be actuarially consistent with the above rates.

(4) The writing of credit disability insurance on two or more lives on a single indebtedness under an arrangement where the debtor pays part or all of the premium is prohibited. Such credit disability insurance written under an arrangement where the debtor must pay part or all of the premium is unjust, unfair and inequitable. Since the Commissioner of Insurance has never approved the writing of joint credit disability insurance, any such plans which might be in force without knowledge of the Commissioner are hereby disapproved. Any insurer which may have written any such plan of insurance shall immediately cease enrolling or insuring any new debtors under any such joint credit disability insurance plan or policy.

(5) An insurer may at any time charge a rate which is less than the basic maximum rate set forth above in this section. (History: Sec. 40-4215, Imp. 40-4210 (2), R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75; AMD 1978 MAR p. 159, Eff. 10/15/78).

6-2.6(10)-S820 LIMITATION OF PRESUMPTION OF REASONABLENESS. The rates provided by MAC 6-2.6(10)-S810 are presumed to

produce reasonable benefits in relation to premiums only if:

(1) The coverage contains no exclusion for pre-existing conditions except for those conditions which manifested themselves to the insured debtor by requiring medical diagnosis or treatment, or would have caused a reasonably prudent person to have sought medical diagnosis or treatment within six (6) months prior to the application for insurance and which caused loss within the six (6) months following the effective date of coverage. However, a disability commencing after the expiration of the first six (6) months following the effective date of coverage and resulting from such conditions shall be covered.

(a) The policy shall provide that in event the indebtedness covered by the policy results from the refinancing in whole or part of a prior debt with the same creditor, any period of exclusion for pre-existing conditions shall be reduced by any period that creditor-debtor disability coverage was in force in connection with the prior indebtedness, provided however, that if the resulting period of exclusion for pre-existing conditions is less than the period that would normally be applicable and if as a result a claim for disability benefits would not otherwise be allowed is payable, the benefits for such claim need not be greater than those which would have been paid under the prior policy if it had not terminated.

(2) Coverage is provided or offered to all debtors regardless of age or to all debtors not older than the applicable age limit, which shall not be less than attained age sixty-five (65) years if such limit applies to the age when the insurance attaches, or not less than attained age sixty-six (66) years if such limit applies to the age on the scheduled maturity date of the debt.

(3) That the contract may require submission of evidence of insurability, and

(4) That the contract may require the debtor be gainfully employed (or unemployed solely because of seasonal lay-off) at the time the insurance becomes effective and meets other standards as provided in these regulations. (History: Sec. 40-4215, Imp. 40-4210 (2), R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75; AMD 1978 MAR p. 159 Eff. 10/15/78.)

6-2.6(10)-S830 ALLOWABLE EXCLUSIONS AND RESTRICTIONS (1) Any contract to which the rates provided by MAC 6-2.6(10)-S810 apply may contain provisions excluding or restricting coverage in the event of pregnancy, intentionally and self-inflicted injury, foreign travel or residence, flight in non-scheduled aircraft, or war or military service.

(2) If more restricted coverage is to be provided, there must be an appropriate reduction in the foregoing premium standards.

(3) Except in unusual cases, such insurance should not be sold to military persons. (History: Sec. 40-4215, Imp. 40-4210 (2), R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75.)

6-2.6(10)-S840 FILINGS--INSURER'S STATEMENT Any filing

made pursuant to this sub-chapter shall clearly indicate whether the insurer believes that the rates in the filing are within the acceptable rates established by this sub-chapter or are higher than those established rates. (History: Sec. 40-4215, Imp. 40-4210 (2), R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75.)

6-2.6(10)-S850 REQUESTS FOR HIGHER RATES--APPROVAL BY COMMISSIONER (1) Requests for rates higher than those established in this sub-chapter for a debtor or a creditor or a class or classes of debtors or creditors will be approved on a satisfactory showing by the insurer that, because of the nature of the risk, the mortality or morbidity experience which may reasonably be anticipated will be significantly higher than the average anticipated experience upon which the applicable rate standard was based.

(2) In judging requests for higher rates, the Commissioner of Insurance will consider:

(a) Available mortality and morbidity data pertaining to the debtors of a creditor or a class or classes of debtors of a creditor;

(b) Previous experience, if any, for an actuarially credible period of the creditor's debtors, including the experience of any subsidiary or affiliate of the creditor;

(c) Available age data; and

(d) A reasonable rate of expense.

(3) Age data and prior experience of the creditor's program should always be submitted.

(4) Commissions or other payments or allowances to creditors, agents, or general agents will not be considered a justification for higher rates. (History: Sec. 40-4214, Imp. 40-4210 (2), R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75.)

6-2.6(10)-S860 REFUNDS (1) Section 40-4211, R.C.M. 1947, requires that the formula to be used in computing refunds be filed with the Commissioner of Insurance.

(2) Any refund formula which is at least as favorable to the insured debtor as the "sum of the digits" formula (also called the "rule of 78ths") for single premium plans, or pro rata for other plans, is acceptable to the Commissioner.

(3) A refund or credit need not be made if the amount thereof is less than one dollar ($1.00).

(4) If credit life insurance on a debtor terminates prior to expiration of the period for which a charge for such insurance has been made to the debtor, by reason of early discharge of indebtedness by cash or refinancing, or by payment of a lump sum disability insurance claim, or otherwise, except by payment of a death claim under the Credit Life Insurance Policy, a refund of such charge for insurance shall be made to the debtor or credited to his account. If Credit Accident and Health Insurance on a debtor terminates prior to expiration of the period for which a charge for such insurance has been made to

the debtor, for any reason whatsoever except for payment of a lump sum disability insurance benefit, a refund of such charge for insurance shall be made to the debtor, or to his beneficiary or estate, as appropriate. In any refinancing or consolidation of an indebtedness, no policy provision covering the new indebtedness shall operate to deny benefits which would have been payable had the refinancing or consolidation not taken place. (History: Sec. 40-4215, Imp. 40-4211, R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75; AMD 1978 MAR p. 159, Eff. 10/15/78).

6-2.6(10)-S863 CREDITOR-- REMITTANCE OF PREMIUMS TO INSURER. If the creditor adds identifiable insurance charges or premiums for credit insurance to the total amount of the indebtedness and makes any direct or indirect finance, carrying, credit or service charge whatever to the debtor in connection with such insurance charge, the creditor is deemed to have loaned the premium or insurance charge to the debtor and the premium or insurance charge is deemed collected for the insurer as soon as it is added to the indebtedness, in which event, the creditor must remit and the insurer shall collect on a single premium basis only. A creditor may remit and an insurer may collect premiums for credit life insurance on a monthly balance basis. The charge for the premium shall be shown separately from the balance of the loan and any payment received by the creditor shall first be applied to pay the credit life insurance premium. Only in the event no payment is made or the payment made is insufficient to satisfy the premium charge, may the creditor add the unpaid premium to the loan and remit it to the insurers. If the premium charged by the insurer for group credit life insurance is on the basis of the outstanding balances of indebtedness at risk at each premium due date, the amount charged to the debtor for such insurance shall not exceed the substantial mathematical equivalent of the premiums to be charged for that insurance by the insurer, as computed at the time the charge to the debtor is determined. Schedules of such permissible charges shall be provided to the creditor with instructions on the manner and method such schedules must be used to effect compliance with the law. (History: 40-4215, Imp. Sec. 40-4211, R.C.M. 1947; NEW, 1978 MAR p. 159, Eff. 10/15/78).

6-2.6(10)-S865 ANTICIPATED LOSS RATIO OF 'CLAIMS INCURRED' TO 'PREMIUMS EARNED' OF NOT LESS THAN FIFTY PERCENT. (1) "It is hereby ruled that as a basic test of the reasonableness of the relation of benefits to the premium charged an anticipated loss ratio of 'claims incurred' to 'premiums earned' of not less than fifty percent (50%) will be developed.

(2) If it comes to the attention of this department that the total current expected expenses (including acquisition expenses) exceed 50% of the premium dollar, such information shall be considered as prima facie evidence that such company intends to write credit business at a loss ratio not in com-

pliance with the regulations as stated. The company shall then be required to show just cause why the premium rates as filed should not be reduced." (History: 40-4215, Imp. Sec. 40-4211, R.C.M. 1947; NEW 1978 MAR p. 159, Eff. 10/15/78.).

6-2.6(10)-S870 COMPLIANCE-- FORMS, CONTRACTS AND RATES Forms, contracts and rates used in this state shall comply with the applicable provisions of this sub-chapter. (History: Sec. 40-4215, Imp. 40-4210 & 40-4211, R.C.M. 1947, NEW, MAC Not. No. 6-2-3; Order MAC No. 6-2-6; Adp. 3/17/75; Eff. 4/4/75.)

3. Consideration was given to the comments and testimony received at the hearing. The Commissioner of Insurance has adopted the rules and amendments because the changes will prohibit excessive charges; unfair trade practices currently taking place, revise the table for credit disability rates in accordance with legislative changes; and clarify present rules.

The adoption of these rules is to become effective one hundred and twenty (120) days after the publication of this notice in the Montana Administrative Register.

James A. Cheetham
Assistant Chief Deputy
Commissioner of Insurance

Certified to the Secretary of State June 15, 1978.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the Proposed Adoption of Rules for the	)))	NOTICE OF ADOPTION OF RULES

TO: ALL INTERESTED PERSONS

1. On October 13, 1977, the Department of Institutions gave notice of proposed rules for the Reimbursement Unit in Notice No. 20-2-4.

2. The proposed rules were published in the Montana register on October 24, 1977. A Petition was received for public hearing on behalf of the patients of the Warm Springs State Hospital and the Galen State Hosptial.

3. That a public hearing was conducted on February 17, 1978 at the hour of 9:30 A.M. in the conference room in the central office of the Department of Institutions.

4. On June 6, 1978 the hearings officer made his Proposed Findings of Fact and recommendations to the department.

5. The department has adopted the rules with the following changes: (Also, the department has implemented a new numbering system, which is reflected herein.)

20.11.005 ANNUAL PER DIEM RATE Pursuant to the authority vested with the Department of Institutions, the Reimbursement Sections are charged with determining the ability to pay of each resident in an institution not to exceed the full cost of care as established by the Department. The resident's parents or financially responsible persons ability to pay will be his total liability. Upon admission or commitment to the institution a representative of the Reimbursement Sections will contact the patient or his next of kin or financially responsible person for the information. This statement will be on a form approved by the Department of Institutions.

20.11.010 ABILITY TO PAY Once the ability to pay determination has been made by the Reimbursement Section, this amount will be submitted on a monthly bill to the patient or financially responsible person. If they are dissatisfied with the determination of the Reimbursement Section, they may appeal pursuant to 20.11.025 Everyone who is affected by this rule must complete a confidential financial statement.

20.11.015 PROCEDURE TO OBTAIN FINANCIAL INFORMATION If the Reimbursement Bureau finds that an individual or financially responsible person is failing to give adequate

financial information, the bureau may use the following procedure to obtain this information; (1) a personal representative of the Reimbursement Bureau will contact the patient or his financially responsible person for an interview at which time it will be explained to the individual what information is needed and why it is necessary.

(2) If that initial interview does not accomplish the results intended by the Reimbursement Bureau, a formal letter from the Reimbursement Office in Helena will be sent to the patient or financially responsible persons requesting needed information. It will be stated that this information must be submitted to the Reimbursement Bureau within 10 working days.

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

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

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

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

Within five working days after receipt of the report, the

Director of the Department may petition the District Court where the patient or financially responsible person is residing to order a hearing to show cause why the subpoena was not obeyed.

20.11.020 APPEALS PROCEDURE If the patient or financially responsible person disagrees with the determination of the Reimbursement Bureau as to the ability to pay, that person has an option of requesting a formal or informal appeal. If the person elects the informal appeal process, within 10 working days after receipt of the determination of the ability to pay, he may make a request in writing of the Reimbursement Bureau in Helena for a conference. The aggrieved party and the Reimbursement Bureau will set a time and place for this conference and the aggrieved party will submit any new evidence, matters or things that he feels is necessary to justify a redetermination. At the conclusion of that conference, the Reimbursement Bureau will submit a written redetermination to the aggrieved party within five working days after the conference. If the aggrieved party is still dissatisfied with the redetermination, they may elect the formal appeals process and appeal to the Board of Institutions within 30 days.

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

(2) Upon receipt of the notice of appeal, the Chairman of the Board of Institutions will ask the Director of the Department and the aggrieved party if they wish to have any discovery process. If either party requests discovery, the Chairman of the Board of Institutions will designate a period of time in which discovery is to take place and be completed. By discovery it is meant the use of written interrogatories and/or depositions, production of documents etc. All means of discovery will be pursuant to the Montana Rules of Civil Procedure concerning discovery. At the conclusion of discovery, the matter will be deemed at issue and the Chairman of the Board of Institutions will confer with the board to decide whether or not the full board will hear the hearing, or whether a Hearings Examiner will be appointed. When it is decided by the board whether to hear the matter itself or appoint a Hearings Examiner, the board will then set a date

for the hearing and if need be, name a Hearings Examiner. At the time set for the hearing, the Board or the Hearings Examiner will conduct the hearing in accordance with the Montana Rules of Evidence. The hearing will be adequately transcribed. At the conclusion of the hearing, the Board of Institutions or the Hearings Examiner may request Proposed Findings of Fact and Conclusions of Law and supporting briefs from the parties. The time for submission from these proposed Findings of Fact and Conclusions of Law and supporting memorandums will be set by the Chairman of the Board of Institutions or the Hearings Examiner. When all matters have been submitted to the Hearings Examiner, he will write his Proposed Findings of Fact and Conclusions of Law and submit them to the Board for adoption, or the Board may proceed to hear and decide the matter on its own merits.

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

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

(3) If a billing error occurs resulting in receipts which exceed the cost of care or if combined payments from more than one payer are received which exceed the cost of care, a refund request will be initiated with the appropriate party or intermediary listed as designated recipient.

20.11.035 PROCEDURE FOR FAILURE TO PAY. Current receivables that are delinquent will be mechanically identified by the Bureau's accounting machine at 30, 60, 90 and 120 day intervals. At 90 days, an aging report summary will be produced by this machine, and collection letters will be prepared which state the intent to use the Department of Revenue for debt collection unless payment is received in 30 days. This letter will also state the enabling legislative reference for our action. If no payment is received at 120 days, another letter will be sent stating the action has been taken, and requesting that all correspondence and/or payment be directed to the Department of Revenue. Accounts scheduled for possible final referral, will at the 90 day interval, be reviewed by the Control Section and Field

Investigative Section supervisors as the final review process prior to the 120 day referral.

6. At the public hearing several persons testified in favor of proposed rule, Mr. James Johnson, of Montana Legal Services testified in opposition to several points of the rules, particularly rule 20.11.010 Some persons testified neither for nor against the proposed rules but offered comments. A variety of objections to the rules were voiced by opponents. After a careful review of the objections, the department's reasons for overruling them are as follows:

(a) While an allegation was made that the rules were too arbitrary there were also allegations that the rules were too general to allow a specific response. It must be pointed out the rules implement statutory changes and many of the objections to the rules are in fact objections to the law. The Department has no control over that statutory wording.

(b) One objection was that the rules go beyond the scope and the intent of the law. The department argues that the rules simply provide details for the implementation of the statute.

(c) That the rule 20.11.010 does not allow patients to accumulate funds for their financial needs when they are discharged from institutions, the department accepts the finding that the statutes already make provision for such cases and to treat everyone equally, the implementation of 20.11.010 is necessary. There is, in fact, an appeals procedure established at the institutions to allow dissatisfied patients to request more monthly allowance.

(d) The department has found that while the objections to the proposed rules were well intended, no substantial evidence was offered to the hearings officer to find to the contrary. Since adequate procedural safeguards are built into the rules and the statutes to protect the patients rights in these areas, the department, therefore adopts these rules.

LAWRENCE M. ZANTO, Director
Department of Institutions

Certified to the Secretary of State June 15, 1978.

BEFORE THE DEPARTMENT OF JUSTICE
FIRE MARSHAL BUREAU
OF THE
STATE OF MONTANA

In the matter of the Adoption and Amendment of Rules ARM 23-2.10B(1)-S1010; 23-2.10B(1)-S1022 relating to the adoption of the latest edition of the Life Safety Code and Adoption of the Uniform Fire Code	NOTICE OF AMENDMENT OF Rule ARM 23-2.10B(1)-S1010 and Adoption of Rule ARM 23-2.10B(1)-S1022.

To: All Interested Persons:

1. On April 24, 1978 the Department of Justice, Fire Marshal Bureau published notice of a proposed adoption and amendment of a rule concerning life safety from fire and the Uniform Fire Code, at page 448 of the 1978 Montana Administrative Register, issue number 4.

2. The agency has adopted these rules as proposed.

3. Jim Kembel, Building Codes Division, appeared as a proponent for adoption. The agency has adopted the rules so that the Life Safety Code will not conflict with the Uniform Building Code regarding the design construction, quality of materials, and location of buildings under construction, and the Uniform Fire Code is to establish a fire protection code that can be used in conjunction with the Uniform Building Code.

Robert E. Kelly
ROBERT E. KELLY, Chief
Fire Marshal Bureau

Certified to the Secretary of State June 14, 1978

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the proposed Adoption of a new rule relating to Public Participation in Board decision making functions.	NOTICE OF ADOPTION OF A RULE 40-3.48(2)-P4815 PUBLIC PARTICIPATION

TO: All Interested Persons:

1. On April 24, 1978, the Board of Landscape Architects published notice of a proposed adoption of a rule concerning public participation in Board decision making functions at page 479, 1978 Montana Administrative Register, issue number 4.

2. The Board has adopted the rule as proposed.

3. No comments or testimony were received. The Board has adopted the rule because such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the Board has reviewed and approved the department rules and has incorporated them as their own.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Certified to the Secretary of State June 15, 1978.

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

In the matter of the proposed Adoption of ARM 40-3.86(6)-S86075 Reciprocity for Registered Land Surveyors, and ARM 40-3.86(6)-S86105 Corporate or Multi-person Firms; amendment of ARM 40-3.86(6)-S8690 Code of Ethics, ARM 40-3.86(6)-S86020 Applications, ARM 40-3.86(6)-S86030 Grant and Issue Licenses, ARM 40-3.86(6)-S86050 Examinations, ARM 40-3.86(6)-S86060 Renewals, ARM 40-3.86(6)-S86070 Reciprocity, ARM 40-3.86(6)-S86080 Duplicate or Lost Licenses; and ARM 40-3.86(6)-S86090 Fees Schedule.	NOTICE OF ADOPTION OF RULE 40-3.86(6)-S86075 RECIPROCITY FOR REGISTERED LAND SURVEYORS; ADOPTION OF RULE 40-3.86(6)-S86105 CORPORATE OR MULTI-PERSON FIRMS; AMENDMENT OF RULES 40-3.86(6)-S8690 CODE OF ETHICS; 40-3.86(6)-S86020 APPLICATIONS; 40-3.86(6)-S86030 GRANT AND ISSUE LICENSES; 40-3.86(6)-S86050 EXAMINATIONS; 40-3.86(6)-S86060 EXPIRATION-RENEWALS-FEE; 40-3.86(6)-S86070 RECIPROCITY FOR PROFESSIONAL ENGINEERS; 40-3.86(6)-S86080 DUPLICATE OR LOST CERTIFICATE; 40-3.86(6)-S86090 FEES SCHEDULE

TO: All Interested Persons:

1. On April 24, 1978, the Board of Professional Engineers and Land Surveyors published notice of proposed adoptions and amendments concerning a complete review of the Board rules at page 481 through 492, 1978 Montana Administrative Register, issue number 4.

2. The Board has adopted the rules as proposed.

3. No comments or testimony were received. The Board has adopted the rules in the way of a complete review of the Board rules as required by Section 82-4204 R.C.M. 1947. For the most part such changes do not intend to delete or impose substantive requirements, but rather are intended only to eliminate out-dated or redundant provisions and to amplify or clarify existing provisions. The notice provided an explanatory statement after each proposed change and specified some detail where a change is substantive.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Certified to the Secretary of State June 15, 1978.

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

In the matter of the proposed Adoption of a new rule relating to Public Participation in Board decision making functions.	NOTICE OF THE ADOPTION OF A RULE, 40-3.106(2)-P10615 PUBLIC PARTICIPATION

TO: All Interested Persons:

1. On April 24, 1978, the Board of Water Well Contractors published notice of a proposed adoption of a rule concerning public participation in Board decision making functions at page 495 of the 1978 Montana Administrative Register, issued number 4.

2. The Board has adopted the rule as proposed.

3. No comments or testimony were received. The Board has adopted the rule because such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and has incorporated them as their own.

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

In the matter of the proposed Amendment of ARM 40-3.106(6)-S10630, Set and Approve Requirements and Standards.	NOTICE OF THE AMENDMENT OF RULE 40-3.106(6)-S10630 SET AND APPROVE REQUIREMENTS AND STANDARDS

TO: All Interested Persons:

1. On April 24, 1978, the Board of Water Well Contractors published notice of a proposed amendment of rule ARM 40-3.106(6)-S10630 concerning requirements and standards at page 495 of the 1978 Montana Administrative Register, issue number 4.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule to re-include the provision in the rule which was inadvertently omitted when the rule was last amended. Such language originally appeared in the rule and was never noticed for repeal. The purpose of the rule is to provide what the Board considers reasonable methods for protecting against contamination and for protecting against unnecessary damage to the casing.

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

In the matter of the proposed) amendment of ARM 40-3.106(6)-) S10650, Examination.) NOTICE OF THE AMENDMENT OF RULE 40-3.106(6)-S10650 EXAMINATION

TO: All Interested Persons:

1. On April 24, 1978, the Board of Water Well Contractors published notice of a proposed amendment to rule ARM 40-3.106(6)-S10650 concerning examinations at page 495 of the 1978 Montana Administrative Register, issue number 4.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule to change the passing score on the examination from 76% to 75%. The Board has always used 75%, and the statement of 76% the Board assumes was a typographical error made when the page was re-typed to reflect an amendment in the prior rule.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Certified to the Secretary of State June 15, 1978.

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

In the matter of the adoption of 11 rules pertaining to reimbursement for skilled nursing and intermediate care services.	)	NOTICE OF AMENDMENT TO THE NOTICE OF ADOPTION OF RULES 46-2.10(18)-S11450A, 46-2.10(18)-S11450B, 46-2.10(18)-S11450C, 46-2.10(18)-S11450D, 46-2.10(18)-S11450E, 46-2.10(18)-S11450F, 46-2.10(18)-S11450G, 46-2.10(18)-S11450H, 46-2.10(18)-S11450I, 46-2.10(18)-S11450J, and 2.10(18)-S11450K.

TO: All Interested Persons

1. On March 24, 1978, the State Department of Social and Rehabilitation Services published Notice of Adoption of eleven rules concerning skilled nursing and intermediate care services at page 398 of the 1978 Montana Administrative Register, Issue No. 3.

2. On page 336 of the 1978 Montana Administrative Register, Issue No. 3 the Agency issued a Notice of Public Hearing for Adoption of the remaining portions of the prospective system for reimbursement of skilled nursing and intermediate services.

3. At that hearing held on June 5, 1978, it was requested that more time be given to consider the modifications to the rule as concerning skilled nursing and intermediate care services to accomplish this and the expiration date of July 1, 1978, which appears at 46-2.10(18)-S11450A(1)(b)(1) and 46-2.10(18)-S11450B(2).

4. The Agency hereby adopts October 1, 1978, as the expiration date in the above listed rules.

Patricia E. Malloy
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1978

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

In the matter of the amendment of Rules 46-2.14 (86)-S14830 and 46-2.14(74) -S14700(5)(6) and adoption of Rule 46-2.14(74)-S14701 all pertaining to vocational rehabilitation services, economic need, placement, and tools, equipment, initial stocks and supplies.	)))))))	NOTICE OF THE AMENDMENT OF RULES 46-2.14(86)-S14830 and 46-2.14(74)-S14700(5)(6) and ADOPTION OF RULE 46-2.14 (74)-S14701.

TO: All Interested Persons:

1. On May 25, 1978, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to Rules 46-2.14(86)-S14830 and 46-2.14(74)-S14700(5)(6) and adoption of Rule 46-2.14(74)-S14701 which all pertain to vocational rehabilitation services, economic need, placement, and tools, equipment, initial stocks and supplies at page 500-502 of the 1978 Montana Administrative Register, issue number 4.

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

3. No comments or testimony were received. The agency has amended and adopted the rules to bring the vocational rehabilitation program into conformity with federal regulations and guidelines governing eligibility for specific services, and to clarify the Department's duties in providing tools, equipment, initial stocks and supplies to eligible clients.

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

In the matter of the amendment of Rule 46-2.10(14)-S11350 pertaining to securing support from absent fathers in behalf of children.	))))	NOTICE OF THE AMENDMENT OF RULE 46-2.10(14)-S11350.

TO: All Interest Persons:

1. On January 25, 1978, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(14)-S11350 pertaining to securing support from absent fathers in behalf of children at page 64-65 of the 1978 Montana Administrative Register, issue number 1.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule in order to bring the cooperation rule into conformity with the Social Security Act; in particular 42 U.S.C. Section 602(a)(26). On August 10, 1977, the Montana Board of Social and Rehabilitation Appeals decided that the cooperation requirement could not be enforced until rules permitting noncooperation upon good cause had been promulgated. It is the intent of these rules to provide standards for noncooperation in situations where cooperation would interfere with the best interests of the child.

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

In the matter of the amendment of Rule 46-2.10(22)-S11670 pertaining to utility expenses.	))))	NOTICE OF AMENDMENT OF RULE 46-2.10(22)-S11670.

TO: All Interested Persons:

1. On February 24, 1978, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(22)-S11670(1)(g) pertaining to utility expenses at page 183-184 of the 1978 Montana Administrative Register, issue number 2.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule in order to liberalize the rule on income deductions for shelter costs to include deduction of expenses incurred for the items listed rather than limiting such deduction to actual payments made.

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

In the matter of the amendment of Rule 46-2.6(2)-S6180N pertaining to child care agencies, personnel.	))))	NOTICE OF AMENDMENT OF RULE 46-2.6(2)-S6180N.

TO: All Interested Persons:

1. On February 24, 1978, the State Department of Social

and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.6(2)-S6180N(11)(a) pertaining to child care agencies, personnel at page 185 of the 1978 Montana Administrative Register, issue number 2.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule in order to add section (11)(a)(iii) which was inadvertently left out of rule 46-2.6(2)-S6180N when it was submitted to be adopted.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1978.

OFFICE OF PUBLIC INSTRUCTION

SPECIAL EDUCATION

EMERGENCY RULES ON HEARING PROCEDURES
FOR SPECIAL EDUCATION APPLICATIONS
TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION

Statement of reasons for emergency.

Pursuant to title 75, chapter 78, of the Revised Codes of Montana, 1947, the Superintendent of Public Instruction has the authority to approve or disapprove certain specified applications for special education which affect the identification, evaluation, or educational placement of a handicapped child or affect the provision of a free appropriate public education to the child. These substantive rights are in imminent peril in that rules for standard procedures for due process protection in applications to the Superintendent of Public Instruction have not been adopted even though decisions must be made on pending applications and on applications expected before rules could be adopted by regular procedures. Handicapped children, their parents and educational agencies must have standard hearing procedures for special education applications to the Superintendent of Public Instruction which are conducted 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 standard procedural safeguards for the due process protection of handicapped children and their parents must be instituted, that standard hearing 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)-P18780. HEARING ON APPLICATIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) Scope. A parent or board of trustees may initiate a hearing when the Superintendent of Public Instruction disapproves an application for special education made pursuant to title 75, chapter 78, of the Revised Codes of Montana, 1947, which affects the identification, evaluation, or educational placement of a handicapped child or which affects the provision of a free appropriate public education to 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 Superintendent of Public Instruction within thirty (30) days after the date of the disapproval.

(3) Notification of Access to Information and Assistance. (a) Upon receipt of a request for a hearing, the Superintendent of Public Instruction 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 of the parent's residence.

(b) Upon request, a parent shall be informed by the Superintendent of Public Instruction of any free or low-cost legal and other relevant services available in the area of the parent's residence.

(4) Conference and Informal Disposition. The Superintendent of Public Instruction shall make a reasonable effort to schedule conferences with the parties for the purpose of resolving differences about the application without a hearing.

(5) Notice of Hearing. (a) The Superintendent of Public Instruction shall schedule a hearing at a time and place which is reasonably convenient to the parent and child.

(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 Superintendent of Public Instruction 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 5 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 the parent shall be provided throughout the hearing at public expense.

(g) The burden of proof initially shall be upon the party requesting the hearing.

(9) Timeliness. Not later than 45 days after the request for a hearing is filed with the Superintendent of Public Instruction, plus specific time extentions granted

at the request of a party and delays attributable to a parent, 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 right to seek judicial review or bring a civil action is sent by certified mail to each party. 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) Hearing Officer. Upon filing a request for hearing, the Superintendent of Public Instruction and the parties shall select an impartial hearing officer in the same manner as provided in Rule 48-2.18(42)-P18770(1), (3), (4) and (5).

(11) 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.

(12) 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 6/09/78)

Georgia Rice
Superintendent of Public Instruction

VOLUME NO. 37 OPINION NO. 143

MOTOR VEHICLES - Sentence for Conviction of Driving Under the Influence;
ALCOHOL - Sentence For Conviction of Driving Under The Influence;
DRUGS - Sentence For Conviction of Driving Under The Influence;
MUNICIPAL CORPORATIONS - City Ordinance Conflicting With State Ordinance;
STATUTES - State Law Conflicting With Local Ordinance;
SECTIONS - 32-2142; 31-145; 32-213(14), R.C.M. 1947.

HELD: 1. The legislature has provided that jail sentences may not be imposed for the first or second offense of driving under the influence of alcohol.

2. Municipal ordinances regarding driving under the influence of alcohol or drugs must be consistent with state law as provided in §32-2142(5).

16 May, 1978

Jim Nugent
City Attorney
City of Missoula
201 West Spruce
Missoula, Montana 59801

Dear Mr. Nugent:

You have requested my opinion regarding the following question:

1. Was it the intent of the legislature in amending §32-2142, R.C.M. 1947, to preclude an individual from being given a jail sentence for either a first or second conviction of driving under the influence of alcohol?

2. Is Missoula's city ordinance regulating driving under the influence of alcohol invalid because it conflicts with state law?

The driving under the influence statute was amended by two bills during the 1977 legislative session. Prior to amendment §32-2142 provided in pertinent part:

> Persons under the influence of intoxicating liquor or of drugs. (a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.
> ...
> (d) Every person who is convicted of a violation of this section shall be punished by imprisonment in the county or city jail for not more than six (6) months or by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by both such fine and imprisonment. On a second conviction he shall be punished by imprisonment in the county or city jail for not less than ten (10) days nor more than six (6) months, to which may be added, at the discretion of the court, a fine of not less than three hundred dollars ($300.00) nor more than five hundred dollars ($500.00). On the third or subsequent conviction he shall be punished for a term of not less than thirty (30) days nor more than one (1) year, to which may be added at the discretion of the court a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00).
> (e) Each and every municipality in this state is hereby given authority to enact the foregoing paragraphs (a), (b), (c) and (d) of this section, with the word "state" in the first sentence of paragraphs (a) and (c) changed in each instance to read "municipality," as an ordinance, and is hereby given jurisdiction of the enforcement of said ordinance, and of the imposition of the fines and penalties therein provided.
> (f) The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person upon receiving a record of such person's conviction or forfeiture of bail not vacated under this section.

Chapter 289, Laws of Montana 1977, approved April 5, 1977, amended §32-2142 by requiring a mandatory minimum sentence

of imprisonment of ten (10) days for persons convicted of a third or subsequent offense of driving under the influence. Chapter 430, Laws of Montana 1977, approved April 19, 1977, amended §32-2142 by revising the penalties for driving while under the influence of alcohol and provided for the suspended execution of a sentence conditioned upon the defendant successfully completing an alcohol treatment program. As the amendments did not conflict, the code commissioner made a composite section embodying the changes made by both amendments. Statutes passed at the same time, and relating to the same general subject are to be construed together, and both given effect if possible. Bellote v. Bakken, 139 Mont. 43, 359 P.2d 372 (1962). Section 32-2142, as amended, now reads in pertinent part:

> (2) It is unlawful and punishable as provided in subsection (3) of this section for any person who is under the influence of alcohol or any narcotic drug or any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state. The fact that any person charged with a violation of this subsection is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating this subsection.
> (3) Every person who is convicted of a violation of this section shall be punished by a fine of not less than $100 or more than $500. On a second conviction, he shall be punished by a fine of not less than $300 or more than $500. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.
> (4) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (3) on the condition that the defendant successfully complete a course in a driver improvement

school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or the treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

(5) Each municipality in this state is given authority to enact subsections (1) through (4) of this section, with the word "state" in the first sentence of subsection (2) changed to read "municipality," as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

By virtue of Chapter 430, Laws of Montana, 1977, the legislature expressly eliminated the provisions regarding jail sentence for the first and second conviction of driving under the influence.

The mere fact that the legislature enacts an amendment indicates that it intended to change the original act. A material change in the language of the original act is presumed to indicate a change in legal rights, a change in substance rather than in mere form. Montana Milk Control Board v. Community Creamery, et. al., 139 Mont. 523, 366 P.2d 151 (1961). Here the presumption that the legislature did not intend a useless act and intended to make a material change in §32-2142 leads to the conclusion that a jail sentence may not be imposed upon an individual for either the first or second conviction of driving under the influence of alcohol. Kish v. Montana State Prison, 161 Mont. 297, 505 P.2d 891 (1973).

That interpretation is consistent with the legislative intent expressed in the title of the bill:

> AN ACT TO REVISE THE PENALTIES FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO CLARIFY THAT HABITUAL USERS WHO DRIVE ARE NOT SUBJECT TO CRIMINAL PENALTIES UNLESS THEY ARE UNDER THE INFLUENCE WHEN THEY DRIVE; TO PROVIDE FOR SUSPENDED EXECUTION OF SENTENCE CONDITIONED UPON EDUCATION OR TREATMENT; AMENDING SECTIONS 31-145, 31-146, 31-149, AND 32-2124, R.C.M. 1947. [Emphasis Supplied].

In passing the amendments it was the intent of the legislature to adopt a novel and hopefully a more successful approach to the problem of alcohol and driving. The section now provides that most sentences may, in the court's discretion, be suspended on the condition that the defendant successfully complete a course in an acceptable driver improvement school or an alcohol treatment program approved by the Department of Institutions. It is clear that the legislature determined that this approach would do more to solve a serious social problem than the imposition of jail terms for first and second offenders.

The provisions requiring mandatory revocation of a driver's license upon conviction of driving under the influence of alcohol were also amended by Chapter 430, Laws of Montana 1977. Section 31-146 makes the revocation of a driver's license mandatory upon the conviction of driving while under the influence. Section 31-149 provides that a license shall be suspended for a period of six (6) months upon first conviction and further that the license shall be revoked for a period of one year for any subsequent conviction within five (5) years of the first offense. However, consistent with the rehabilitation approach adopted by the 45th Legislative Session, §31-145(b) was amended to provide in pertinent part:

> The court may also recommend that the division issue a restricted probationary license in lieu of the suspension required in 31-149(b) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The division shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana operator's or chauffeur's license.

You have also asked whether Missoula's city ordinance regulating driving under the influence is invalid because it conflicts with state law. Section 20-22.1, Missoula City Code, essentially follows prior Montana law and provides for a mandatory jail sentence for conviction of driving a vehicle while under the influence of intoxicating liquor.

Local governments, even those with self-governing powers, are denied the exercise of any power in a manner inconsistent with state law in any area affirmatively subjected to state regulation or control. Section 47A-7-203. See

also, City of Bozeman v. Ramsey, 139 Mont. 148, 362 P.2d 206 (1961); City of Billings v. Herold, 130 Mont. 138, 296 P.2d 263 (1956). Section 32-213(14) specifically provides that with respect to streets and highways under their jurisdictions, cities and towns may enact ordinances regulating vehicles and operators thereof which are not in conflict with state law. Section 32-2142(5), quoted above, expressly grants authority to municipalities to enact ordinances consistent with state law. Municipalities must follow the guidelines provided in the section. Any additional provisions would be in conflict with state law, and exceed the municipality's jurisdiction.

THEREFORE IT IS MY OPINION:

1. The legislature has provided that jail sentences may not be imposed for the first or second offense of driving under the influence of alcohol.

2. Municipal ordinances regarding driving under the influence of alcohol or drugs must be consistent with state law as provided in §32-2142(5).

Very truly yours,

MIKE GREELY
Attorney General

MG/McG/ar

VOLUME 37 OPINION NO. 144

GAME AND FISH - Hunting on another's land;
TRESPASS - Hunting as;
SECTIONS 26-303.3, 94-6-201(1), 94-6-203, R.C.M. 1947.

HELD: Montana's criminal trespass statutes, §94-6-201(1) and 203, do not repeal or affect §26-303.3, which makes it unlawful to hunt big game animals on private property without permission.

24 May 1978

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

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

> Do Montana's criminal trespass statutes, §94-6-201(1) and 203, supercede §26-303.3, which makes it unlawful to hunt big game animals on private property without permission?

A person is guilty of criminal trespass if he knowingly enters or remains unlawfully...on the [land] of another." Section 94-6-203. He enters or remains unlawfully when he does do so without privilege, but he acts with privilege "unless notice is personally conmmunicated to him by an authorized person or unless such notice is given by posting in a conspicuous manner." (Emphasis supplied). Section 94-6-201(1). Criminal trespass is a misdemeanor and may result in a fine of $500 or 6 months imprisonment in the county jail, or both. Section 94-6-203(2).

The fish and game statute, §26-303.3, provides as follows:

> Every resident and nonresident must have obtained permission of the landowner, lessee or their agents before hunting big game animals on private property.

Violation of this statute is also a misdemeanor and the penalty is a fine of not less than $50 or more than $500, imprisonment in the county jail for not more than 6 months, or both. Section 26-324.

Section 26-303.3 has not been expressly repealed, and must be given effect unless it was repealed by implication. In order for enactment of the trespass statutes to have worked a repeal by implication, it must appear that these statutes are plainly and irreconcilably in conflict with the fish and game statute. Montana-Dakota Utilities Co. v. City of Havre, 109 Mont. 164 171, 94 P.2d 660 (1939). The statutes must relate to the same subject and have the same object in view. Id. See also Holly v. Preuss, 34 St. Rptr. 445, 447-448 (1977).

Those conditions are not met here. The trespass statutes prohibit unauthorized entry or presence on the premises of another. The essence of the crime is the unauthorized entry or presence itself. This was not the case under prior Montana law:

> [Section 94-6-203] substantially expands prior law by making individuals criminally liable for knowing trespass. Under former law trespass was not criminal unless the trespasser did some prohibited act, such as hunting, building fires or injuring the realty, and it was these acts, not the trespass itself, which constituted the criminal conduct.

Crowley, Montana Criminal Code, 1973, Annotated, Annotator's Note 232. See §94-3308[repealed, Laws of Montana (1973), ch. 513, sec. 32]

The reason for making entry or presence, without more, a criminal act was to deter violence. People v. Hoskins, 5 Ill.App.3d 831, 284 N.E.2d 60 (1972). As the code annotator's note explains: "Previously since mere trespass was not an offense a landowner could not call in peace officers and was, as a result, often placed in a situation in which his only remedy was self help." Id., at 233.

The privilege contained in §94-6-201(1) is therefore by its express language and logic, a limited one. It is simply coextensive with the substantive crime of trespass, i.e., it grants no more than the trespass statute prohibits.

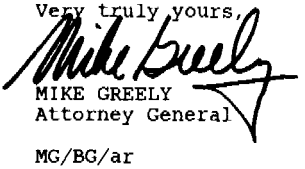
In this regard the privilege does not conflict with the fish and game statute. The conduct prohibited by §26-303.3 is unauthorized hunting, not trespass. The entry or presence while hunting is not prohibited, but rather the affirmative act of hunting itself. This conduct is an interference with

the private property owner's exclusive right to hunt on his property, Herrin v. Sutherland, 74 Mont. 587, 599, 241 P. 328 (1925), which is a property right separate and distinct from his right to prohibit trespass. Because the statutes do not relate to the same conduct, there is no conflict upon which a repeal by implication can be premised.

THEREFORE IT IS MY OPINION:

> Montana's criminal trespass statutes, §94-6-201(1) and 203, do not repeal or affect §26-303.3, which makes it unlawful to hunt big game animals on private property without permission.

Very truly yours,



MIKE GREELY
Attorney General

MG/BG/ar

VOLUME 37 OPINION NO. 145

SCHOOL BOARDS - Voter registration necessary for eligibility as trustee; eligibility refers to qualifications to hold the office rather than qualifications to be elected;
SECTIONS 75-5913, 75-6410, R.C.M. 1947.
ART. IV, §2, §4, 1972 MONTANA CONSTITUTION.

HELD: 1. A person must be registered to vote in the school district to be eligible for the office of school trustee.

2. "Eligibility" as used in §75-5913, R.C.M. 1947 refers to the qualifications required of a school trustee to hold the office, not the qualifications to be elected.

24 May 1978

Robert J. Funk
Garfield County Attorney
Circle, Montana 59215

Dear Mr. Funk:

You have requested my opinion concerning a person's eligibility to hold the office of school trustee. You have asked the following questions:

1. Whether a person must be registered to vote in a school district in order to be eligible for the office of school trustee?

2. Whether "eligibility," as used in §75-5913, R.C.M. 1947, refers to the qualifications to be elected to the office or whether it addresses the qualifications to hold the office?

The factual situation presented in your request is that a successful write-in candidate had not registered to vote thirty days prior to the election, although he had registered to vote by the time of the election.

Your first question has been addressed by a previous attorney general's opinion concluding that a person was not precluded from holding the office of school trustee by not registering to vote, because registration was no part of the

qualifications of an elector. 21 OP. ATT'Y GEN. NO. 179 at 243 (1946). That opinion was based upon case law interpreting the Montana Constitution of 1889, which stated that a person was eligible to vote if he or she was a citizen of the United States and a resident of this state for one year preceding the election, and was twenty-one years of age or more. Art. IX, §2, 1889 Constitution of Montana.

The 1972 Constitution of Montana, however, differs by specifically making registration a necessary part of the qualifications of an elector. Art. IV, §2 of the 1972 Montana Constitution defines "qualified elector" as follows:

> Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court. (Emphasis supplied).

Art. IV, Section 4 of the 1972 Montana Constitution then provides:

> Any qualified elector is eligible to any public office as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Consequently, the registration requirements as provided by the Legislature, as well as the residency requirements, are now a part of the qualifications of an elector.

As for the statutory qualifications of a school trustee Section 75-5913, R.C.M. 1947 states in part:

> Any person qualified to vote in a district under the provisions of section 75-6410 shall be eligible for the office of trustee.

Section 75-6410, then states in part:

> (1) Except as provided in subsections (2) and (3), each person is entitled to vote at school elections if he has all of the following qualifications:

> (a) He has registered to vote with the county registrar as a resident in the school district in which he resides and proposes to vote in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in 75-6413.
> ... (Emphasis supplied)

Therefore, a person is required to register to vote in a school district to be eligible for the office of school trustee. This overrules 21 OP. ATT'Y GEN. NO. 179 at 243 (1946). See also 35 OP. ATT'Y GEN. NO. 91 (1974).

Your second question has been addressed by the Montana Supreme Court in State ex rel. Flynn v. Ellis, 110 Mont. 43, 98 P.2d 879 (1940), wherein the Court stated at p.49:

> The courts do not agree as to the time at which the eligibility or qualifications of a person for public office must be determined. The question has arisen most frequently under statutory or constitutional provisions using the word "eligible" in connection with certain qualifications or disqualifications for public office. One line of authorities holds that the time of election is the proper time to test whether a person is qualified or eligible, and that it is immaterial that a person then disqualified removes the disqualifications before actually entering on the duties of the office.... But the weight of authority appears to be that where the word "eligibility" is used in connection with an office, and there are no explanatory words indicating that such word is used with reference to the time of election, it has reference to the qualification to hold the office, rather than the qualifications to be elected to the office. Hence a disqualification existing at the time of election may be removed before induction into office, or before the term of office to which such person is elected begins. (Emphasis supplied)

The statutes cited by Flynn, as referring to qualifications to be elected to an office, contained the explanatory phrases "at the time of election" or "when elected." The statute construed by Flynn did not contain these explanatory phrases, and merely stated "eligible to the office of county superintendent of schools...." Flynn held that such statutory language referred to the qualifications to hold

the office, rather than qualifications to be elected to the office.

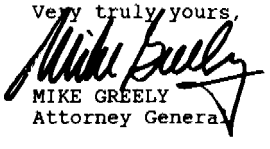
Section 75-5913, as did the statute in Flynn, lacks any explanatory words indicating that "eligible" is used with reference to the time of election. Thus, the word "eligible," as used in 75-5913, has reference to qualifications to hold the office, and any disqualification existing at the time of the election may be removed before the term of office begins. In answer to your second question it is sufficient for the school trustee to be a qualified elector by the time he assumes office.

THEREFORE, IT IS MY OPINION:

1. A person must be registered to vote in the school district to be eligible for the office of school trustee.

2. "Eligibility" as used in §75-5913, R.C.M. 1947 refers to the qualifications required of a school trustee to hold the office, not the qualifications to be elected.

Very truly yours,



MIKE GREELY
Attorney General

MG/CRA/so

VOLUME 37 OPINION NO. 146

FEES Department of Natural Resources and Conservation not required to pay statutory fees of county clerk and recorder nor clerk of district court; cities and counties are required to pay fees prescribed by Board of Natural Resources and Conservation for filing water right applications;
SECTIONS - 25-231, 25-232, 25-209, 89-886(3), 89-870, 89-868(1), R.C.M. 1947.

HELD:

1. The Department of Natural Resources and Conservation is not required to pay the statutory fees of the county clerk and recorder for recording water use permits.

2. The Department of Natural Resources and Conservation is not required to pay the statutory fees of the clerk of the district court for furnishing copies of decrees affecting water rights.

3. Cities and counties are required to pay the fees prescribed by the Board of Natural Resources and Conservation for filing water right applications.

25 May, 1978

Donald D. MacIntyre
Chief Legal Counsel
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59601

Dear Mr. MacIntyre:

You have requested my opinion concerning the payment of fees by and to the Department of Natural Resources and Conservation pursuant to the 1973 Water Use Act.

Section 89-886(3), R.C.M. 1947 requires the Department to send each original water use permit to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The Department is required to establish a centralized system of existing

rights. Section 89-870, R.C.M. 1947. The data to be gathered by the Department includes court decrees adjudicating water rights and records of declaration filed under the ground water code.

The first two questions presented in your request are as follows:

1. Whether the Department must pay the statutory fees of the county clerk and recorder for recording the water use permits?

2. Whether the Department must pay the statutory fees of the clerk of the district court for furnishing copies of decrees affecting water rights?

The fees of county officers are established by statute and are found in Title 25, Chapter 2, R.C.M. 1947. The fees of the county clerk and recorder and the clerk of the district court are found at Sections 25-231 and 25-232, respectively.

Within this same chapter is Section 25-209, which states:

> "No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefore, or in habeas corpus preceedings for official services rendered, and all such services must be performed without the payment of fees."

Consequently, the county officers whose fees are set by Title 25, Chapter 2 are prohibited from collecting fees from the state, any county, or political subdivision thereof, or any public officer acting therefor. The Department, therefore, is not required to pay the fees of the county clerk and recorder to have water use permits recorded, nor must the Department pay the fees of the clerk of the district court for furnishing a copy of any decree affecting water rights.

A third question presented in your request concerns fees set by the Board of Natural Resources and Conservation for the filing of applications with the Department. The question you have presented is whether cities and counties are required to pay the fees prescribed by the Board for processing a water right application.

Section 89-868(1) grants to the Board the power to prescribe fees for any public service rendered by the Department under the Water Use Act, including fees for the filing of applications. The Legislature did not limit this grant of power by exempting cities and counties from being assessed these fees if prescribed by the Board. Nor does the Board's rules which set the fees for filing an application exempt cities and counties. MAC 36-2.14R(1)-S 14020.

It should be noted that Section 25-209 would not exempt cities and counties from the fees prescribed by the Board for filing applications. Section 25-209 is found within Title 25, Chapter 2, R.C.M. 1947 which addresses fees of county officers. It is an elementary rule of statutory construction that all sections of an act relating to the same subject matter should be considered together and not each by itself unless to do so would be plainly contrary to legislative intent. Sutherland, Statutory Construction, §47.06 (1973). The fees prescribed by the Board cannot be classified as fees of county officers and cannot be controlled by Section 25-209.

THEREFORE, IT IS MY OPINION:

1. The Department of Natural Resources and Conservation is not required to pay the statutory fees of the county clerk and recorder for recording water use permits.

2. The Department of Natural Resources and Conservation is not required to pay the statutory fees of the clerk of the district court for furnishing copies of decrees affecting water rights.

3. Cities and counties are required to pay the fees prescribed by the Board of Natural Resources and Conservation for filing water right applications.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 147

COUNTY COMMISSIONERS - Vacancies - term of appointee; Procedure to nominate candidates in next general election; SECTIONS 16-903; 23-2601(2); 23-2604; 23-3301; 23-3321(3); 23-2514, R.C.M. 1947.

HELD: 1. The appointee to fill the vacancy in the office of Flathead County Commissioner will hold that office until the next general election, which is November 7, 1978.

2. The selection of candidates for the general election will be made by each political party according to §23-3321(3), R.C.M. 1947, and pursuant to §23-2514 write-in candidates may also seek the office of county commissioner.

30 May 1978

Patrick Springer
County Attorney
Flathead County Courthouse
Kalispell, Montana 59901

Dear Mr. Springer:

You have requested my opinion concerning the filling of a vacancy in the office of county commissioner. The situation in Flathead County is that Russell H. Deist, a county commissioner, died on May 17, 1978, with approximately four and one half years of his term remaining. The District Court has not appointed a successor.

Two questions are presented by your request:

1. How long will the appointee hold office?

2. If an election for the office is held in 1978, how will candidates for the office be elected?

The first question is answered by §16-903, R.C.M. 1947, which states:

> Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy,

> and such appointee shall hold office until the next general election. (Emphasis supplied).

A general election is defined as "an election held for the election of officers throughout the state at times specified by law. Section 23-2601(2), R.C.M. 1947. Section 23-2604, R.C.M. 1947 states:

> A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.

The next general election will be November 7, 1978.

Section 16-903 clearly provides that the appointee to Russell H. Deist's office will hold that office until the next general election, which is November 7, 1978. See also 36 OP. ATT'Y GEN. NO. 66 (1962).

The problem of nominating candidates for the next general election has been addressed with respect to a similar situation by the Montana Supreme Court and a previous Attorney General's opinion. In Laborde v. McGrath, 116 Mont. 283, 149 P.2d 913 (1944) a county treasurer had died approximately four years before the expiration of his term. The Constitution provided that the appointee should hold office until the next general election. The Court stated in Laborde at 293:

> Should a vacancy be filled by an appointment made subsequent to the holding of the primary election but prior to the general election or should the appointment be made at such other time as would make it impossible or unreasonable for candidates to file and otherwise comply with the Primary Nominating Election Law, then the prohibition of Section 639 would not apply and the nominations of a candidate could then be made pursuant to the provisions of Section 612, Revised Codes or of Section 615. (Emphasis supplied).

29 OP. ATT'Y GEN. NO. 46 at P. 108 (1962) applied this rationale to a situation where a county commissioner was not up for election in the forthcoming general election but died after the primary election. The Attorney General held that nominees for the vacancy could be selected according to methods provided by §§23-801 and 23-804, R.C.M. 1947, which were by party convention or certificates of nomination.

The rationale of Laborde v. McGrath applies to the present situation. The appointment will be made at a time which makes it impossible for candidates to file and comply with the primary election and nomination statutes, §§23-2301, et seq., R.C.M. 1947. Therefore, the selection of candidates pursuant to a primary election in accordance with §23-3301 et seq., R.C.M. 1947 does not apply. In addition, §§23-801 and 23-804, R.C.M. 1947 were repealed by Laws of Montana (1969), ch. 368, sec. 248, and the nominating procedures provided thereunder no longer exist.

The only alternative method of nominating candidates, which does not involve the primary election laws and the filing deadline thereunder is the procedure provided in §23-3321, R.C.M. 1947 for filling vacancies in the office of a candidate before and after the primary.

Section 23-3321(3) provides:

> When a vacancy occurs in the office of a candidate after the primary and before the general election in any district however constituted, the vacancy shall be filled as follows:
>
> (a) The vacancy shall be filled by a committee of three (3) members elected from each county or district by the county central committees of the county or district of the affected political party.
>
> (b) The secretary of the committee shall transmit a certificate to the secretary of state with the information contained on the original certificate plus the cause of the vacancy, the name of the person nominated, the office to be filled, and the name of the person for whom the nomination was made.
>
> (c) When the certificate is filed with the secretary of state accompanied by the proper filing fee he shall insert the name of the person nominated to fill the vacancy.

Since the office of county commissioner has become vacant with no opportunity to nominate candidates in the primary election, a vacancy in the office of the candidate for county commissioner has occurred after the primary and before the general election. All political parties are affected and are entitled to nominate a candidate pursuant to §23-3321(3), R.C.M. 1947. In addition, anyone interested in the office may wage a write-in campaign as provided by

law. Section 23-2514, R.C.M. 1947. The successful candidate will take office as soon as the election is certified and will serve as county commissioner for the remainder of Russell H. Deist's term.

THEREFORE, IT IS MY OPINION:

1. The appointee to fill the vacancy in the office of Flathead County Commissioner will hold that office until the next general election, which is November 7, 1978.

2. The selection of candidates for the general election will be made by each political party according to §23-3321(3), R.C.M. 1947, and pursuant to §23-2514 write-in candidates may also seek the office of county commissioner.

Very truly yours,

MIKE GREELY
Attorney General

CRA/so