# MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 15
PAGES 831 — 860

NOTICE: The July 1977 through June 1979 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59601.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA

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| In the Matter of the Adoption of a Rule Setting the Weight of Bread sold when not in accordance with Section 30-12-401, M.C.A. | ) ) ) ) | NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE |

TO: All Interested Persons

(1) On September 6, 1979, at 10:00 a.m., a public hearing will be held in the conference room of the Department of Business Regulation, 805 North Main Street, Helena, Montana to consider the adoption of a rule pertaining to the standards of weight for the sale of bread when other than in accordance with Section 30-12-402. The new rule pertains to the sale of bread in metric measurements.

(2) The current rule does not modify or replace any rule found currently in the Administrative Rules of Montana.

(3) The proposed rule provides as follows: **(Rule I)**

(1) Bread

(a) Each loaf of bread and each unit of a twin or multiple loaf of bread produced or procured for sale, kept, offered or exposed for sale, or sold, whether or not the bread is wrapped or sliced, if not weighing in accordance with Section 30-12-402, M.C.A., shall weigh ¼ kg (250 mg), ½ kg (500 mg), 3/4 kg (750), 1 kg (1000mg) or multiples of ½ kg (500 mg). This rule shall not apply to biscuits, buns or rolls weighing ¼ kg or less or to "state bread" sold and expressly represented at the time of sale as such.

(4) This rule is being proposed by virtue of a request for rulemaking filed as a result of the passage of a bill providing for the metric measurements of certain commoditites. (Chapter 75, Montana Session Laws, Forty-Sixth Legislature 1979). The proposed rule provides for the metric alternative measurements which are created in the new law.

(5) Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, **or by September 13, 1979.**

(6) Robert J. Wood, Esq. 805 North Main Street, Helena, Montana 59601 has been designated to preside over and conduct the hearing.

(7) The authority of the department to make the proposed rule is based on Section 30-12-202, MCA. The proposed rule implements Chapter No. 75, Montana Session Laws, Forty-Sixth Legislature, 1979. **(Section 30-12-202 MCA, Sec. 90-160 R.C.M.)**

Kent Kleinkopf

Kent Kleinkopf, Director
Department of Business Regulation

Certified to the Secretary of State August 6, 1979

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

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| In the Matter of the Amendment of Rule 24-3.14AI(1)-S1400 Minimum Guidelines for Registration of Programs and Rule 24-3.14AI(2)-S1410 Registration Policy and Procedures | ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENTS OF RULES 24-3.14AI(1)-S1400 AND 24-3.14AI(2)-S1410 (APPRENTICESHIP STANDARDS) NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons:

1. On September 28, 1979, the Department of Labor and Industry proposes to amend Rules 24-3.14AI(1)-S1400 and 24-3.14AI(2)-S1410 which regulate Apprenticeship Standards.

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

24-3.14AI(1)-S1400 MINIMUM GUIDELINES FOR REGISTRATION OF PROGRAMS (1) Programs submitted for approval and/or registration by the Apprenticeship Bureau, Labor Standards Division, Department of Labor and Industry, will contain the following:

(a) Provision that the starting age of an apprentice shall not be less than sixteen (16).

(b) Statement of basic qualifications for apprenticeship: specific and applying equally to all applicants.

(c) Provision for compliance with Title 29 C.F.R. Part 30, which includes Montana State Plan for Equal Employment Opportunity in apprenticeship.

(d) Provision that the term of apprenticeship is consistent with industry practice, but in no case less than ~~two years or 4,000~~ 2,000 hours of reasonably continuous employment, which may include supplementary instruction except as otherwise provided by the Montana State Law.

(e) A schedule of work processes in which the apprentice will receive work experience and training on the job, and the allocation of the approximate amount of time to be spent in each major process or division of the trade.

(f) Provision for proper supervision of on-the-job training.

(g) A progressively increasing schedule of wages for apprentices. The entry wage shall equal or exceed the Montana Minimum Wage Law or Fair Labor Standards Act minimum where applicable.

(h) Provision for organized related and supplemental instruction. This may include supervised correspondence or

self-study courses as approved by State Law. A minimum of 144 hours each year of apprenticeship is recommended.

(i) A statement of the ratio of apprentices to journeymen. The Apprenticeship Bureau will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) Provision for periodic evaluation of the apprentice's progress, both in job performance and related instruction; and the maintenance of appropriate progress records.

(k) Provision for evaluation of and granting credit for previous experience.

(l) Provision for safety training for apprentices, both on the job and in related instruction.

(m) Provision that apprentices will be under a written agreement with their employer, or with an employers association, or a joint apprenticeship committee pursuant to State apprenticeship laws and regulations.

(n) Identification of the "Apprenticeship Agency" by whom apprentices, apprenticeship programs and subsequent amendments thereto will be approved and recorded.

(o) Provisions for notifying the "Apprenticeship Agency" of all actions affecting apprenticeship, such as new hires, completions, suspensions, and cancellations.

(p) Provision for employer-employee cooperation where a bargaining agreement exists, except where no participation has been evidenced or practiced by the bargaining agent. Where there is employer and employee participation it may be demonstrated by one or more of the following:

(i) Appropriate provisions in the bargaining agreement.

(ii) Signature to the standards.

(iii) Letter from each indicating agreement to the programs.

(iv) Establishment of a joint apprenticeship committee.

(q) Provision for recognition for successful completion. Recognition is acknowledged by a Certificate of Completion of Apprenticeship.

24-3.14AI(2)-S1410 REGISTRATION POLICY AND PROCEDURES

(1) In order that a standard of training be maintained and upheld for all apprenticeable occupations, the following policy must be satisfied before approval and registration will be granted a program sponsor: All provisions of program approval either meet or exceed those recognized in the immediate geographical or state wide area where applicable. These provisions apply to all of those listed in Chapter 14AI, Sub-Chapter 1, Minimum Guidelines for Registration of Apprenticeship Programs, including wages.

(2) Apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multi-

state basis and are registered pursuant to all requirements of Title 29 Code of Federal Regulations, Part 29, as adopted February 15, 1977, by any recognized State Apprenticeship Agency/Council or by the Bureau of Apprenticeship and Training, U.S. Department of Labor, shall be accorded approval reciprocity by the Apprenticeship Bureau, if such reciprocity is requested by the sponsoring entity.

3. The reason for these amendments is to bring the rules in conformity with amendments in Montana Code Annotated which were effective July 1, 1979, and to comply with the provisions of Title 29 Code of Federal Regulations, Part 29, as adopted February 15, 1977.

4. Interested parties may submit their data, views, arguments, and comments concerning the proposed amendments in writing to the Apprenticeship Bureau, Department of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana 59601. Written comments, in order to be considered, must be received no later than September 17, 1979.

5. The authority of the Commissioner of Labor and Industry to adopt the proposed amendments is found in Section 39-6-101(9) MCA (Section 41-1201(b) R.C.M. 1947). Implementing Section 39-6-106, MCA, (Section 41-1204, R.C.M. 1947).

CERTIFIED TO THE SECRETARY OF STATE AUGUST 3RD, 1979.

BY: _____
DAVID E. FULLER
Commissioner

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

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| In the matter of the amendment of ARM 32-2.14(1)-S1400 through 32-2.14(1)-S1440 and the adoption of new rules relating to aerial hunting of predatory animals. | NOTICE OF PUBLIC HEARING ON THE AMENDMENT OF RULES ARM 32-2.14(1)-S1400 THROUGH 32-2.14(1)-S1440 AND THE ADOPTION OF NEW RULES (Aerial Hunting of Predatory Animals) |

TO: All Interested Persons

1. On September 25, 1979 at 3:00 p.m. a public hearing will be held in the auditorium of the Scott Hart Building, 6th & Roberts, Helena, Montana, to consider amendments of ARM 32-2.14(1)-S1400 through 32-2.14(1)-S1440 and the adoption of new rules on the subject of aerial hunting of predatory animals.

2. In summary, the proposed amendments to the current rules and the rules which are to be adopted provide for the issuance of aerial hunting permits, fees associated with their issuance, and the identification of aircraft used in aerial hunting. The exact text of these proposals is found in MAR NOTICE NO. 32-2-48 beginning at page 521 of the 1979 Montana Administrative Register, Issue No. 11. By this reference they are incorporated into this notice.

3. These rules are being amended and proposed for adoption because of the enactment into law of Senate Bill 497, (Chapter 704, Laws of Montana, 1979). That act provides a statutory basis for an aerial hunting permit system for predatory animals and the adoption of rules to reduce livestock loss from predation while protecting the rights of land owners, administrators or leasees who do not desire aerial hunting to occur over lands under their control.

4. All interested persons may present their data, views, or arguments either orally or in writing at the hearing.

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

6. The authority of the agency to make the proposed rules is based on Section 2 of Chapter 704, Laws of Montana, 1979. These proposals will implement the provisions of that chapter.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State August 7, 1979.

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

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| IN THE MATTER of the Proposed) Repeal of ARM 40-3.62(6)-S62075 concerning exemptions for domestic servants and housekeepers | NOTICE OF PROPOSED REPEAL OF ARM 40-3.62(6)-S62075 EXEMPTIONS; DOMESTIC SERVANTS AND HOUSEKEEPERS<br><br>NO PUBLIC HEARING CONTEMPLATED |

To: All Interested Persons:

1. On September 15, 1979, the Board of Nursing proposes to repeal ARM 40-3.62(6)-S62075 concerning exemptions for domestics and housekeepers.

2. The rule is proposed to be repealed in its entirety and is located at page 40-247 of the Administrative Rules of Montana.

3. The Board is proposing the repeal of this rule as it is in direct conflict with the Attorney General's Opinion issued on February 15, 1977. The text of the opinion is available in the Board office in the Lalonde Building, Helena, Montana.

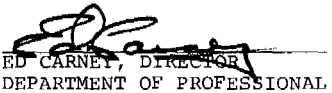
4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Board of Nursing, Lalonde Building, Helena, Montana 59601 no later than September 13, 1979.

5. If a person who is directly affected by the proposed repeal 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 the Board of Nursing, Lalonde Building, Helena, Montana 59601 no later than September 13, 1979.

6. If the Board receives requests for a public hearing on the proposed repeal from 10% or 25 or more of those persons directly affected by the proposed repeal of the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the Board to make the proposed repeal is based on section 37-8-202 MCA (66-1225 R.C.M. 1947) and implements section 37-8-103 MCA (66-1242 R.C.M. 1947).

BOARD OF NURSING
JANIE CROMWELL, R.N., PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 7, 1979.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a rule relating to internal catchphrases located in rules in the Administrative Rules of Montana | ) ) ) ) | NOTICE OF PROPOSED ADOPTION OF A RULE - INTERNAL CATCH-PHRASES<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons

1. On September 17, 1979, the Secretary of State proposes to adopt a rule relating to internal references located in rules in the Administrative Rules of Montana.

2. The proposed rule provides as follows:

RULE I INTERNAL CATCHPHRASES (1) During recodification, catchphrases that appear within the language of a rule must be removed from each existing rule in the Administrative Rules of Montana (ARM), with the exception of the Organizational Rule which format is set down by the attorney general. These catch-phrases are located within the body of the rule and are usually preceded by a subsection designation and are usually underlined. They express different ideas or topics under one rule. The purpose of this rule is to shorten rules. Rules should be written in a simple, clear and direct style that is easily understood by the user. Generally, rules should include only a single idea.

(2) An existing rule with internal catchphrase(s) must be broken down into an additional rule or group of rules. This assists the user as each rule number and catchphrase is listed on the sub-chapter table of contents which eliminates research-ing through a long rule to find the desired information.

(3) New rules to be included in ARM may not contain internal catchphrases.

(4) Shorter rules can be more easily amended, as the entire language of the rule can be included in the notice pub-lished in the Montana Administrative Register and not taken out of context as in the case of a longer rule. A long rule is amended by citing to a subsection(s) thereby requiring the user to refer back to the entire rule in ARM.

3. This rule is proposed to shorten rules and to have rules written in a simple, clear and direct style that is easily understood by the user.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Mr. Leonard C. Larson, Chief Deputy, office of the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59701, no later than September 13, 1979.

5. The authority of the Secretary of State to make the proposed new rule is based on Sec. 2-4-306 MCA (Sec. 82-4204(2) R.C.M. 1947), IMP, Sec. 2-4-306 MCA (Sec. 82-4204(2) R.C.M. 1947).

Dated this sixth day of August, 1979.

Frank Murray

FRANK MURRAY, Secretary of State

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

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| In the matter of the adoption of rules specifying forms and procedures for providing additional funding for secondary vocational education according to the provisions of House Bill 537, Forty-Sixth Montana Legislature. | ) ) ) ) ) ) ) | NOTICE OF PROPOSED ADOPTION OF RULES Secondary Vocational Education Forms and Fund Allocation Procedures<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All interested persons

1. On September 21, 1979 the Superintendent of Public Instruction proposes to adopt a rule for specifying forms and procedures to be used by eligible school districts in applying for and expending funds made available to them according to House Bill 537, Forty-Sixth Montana Legislature.

2. The proposed rules provide in substance that:

(a) school districts account for H.B. 537 monies they receive in a subfund of their general fund budget;

(b) eligibility requirements govern a school's participation;

(c) specific forms be used by eligible school districts in applying for and accounting for monies they receive under the provisions of the Act;

(d) a funding formula govern the allocation of funds to eligible school districts;

(e) monies not expended in the fiscal year for which they were allocated be returned to the Superintendent.

3. The new rules, as proposed for adoption, are as follows:

RULE I POLICY STATEMENT CONCERNING RULES FOR HB 537 The purpose of these rules is to implement HB 537, Forty-Sixth Montana Legislature. In order to fulfill the intent of that act, the Superintendent of Public Instruction and eligible school districts shall conform to the following rules for allocating, expending and accounting for the monies provided. It must be noted that each recipient school district shall certify that district expenditures for secondary vocational education programs in the district have increased by the amount granted from the appropriation.

RULE II DEFINITION OF TERMS (1) "Additional cost items" are as follows:

(a) instructional supplies used in an approved program

(b) instructional equipment used in an approved program

(c) instruction-related travel expense for an approved program

(d) repair and maintenance of instructional equipment for an approved program

(e) teacher salaries for extended term contracts which provide for supervision of students in vocational related activities such as

cooperative work experience and programs that extend beyond the school year

(f) stipends for supervision of vocational youth groups including:

(2) ''Non-allowable cost items'' are as follows:

(a) salaries for administration or instruction other than those defined as an additional cost item

(b) rental or purchase of classroom facilities

(c) classroom furniture, supplies and equipment other than that defined as an additional cost item

(3) ''Approved secondary vocational programs'': Vocational education for persons in high schools which have been designated as approved programs by the Superintendent.

(4) ''Secondary vocational education'': High school programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(5) ''School district'': The territory, regardless of county boundaries, organized under the provisions of Montana Code Annotated 20-6-101, to provide public educational services under the jurisdiction of the trustees as prescribed by Montana law.

(6) ''Superintendent of Public Instruction''includes the Superintendent, the Administrator of the Department of Vocational Education, and the Department of Vocational and Occupational Education.

(7) ''Secondary vocational program'': Vocational education for persons in high school (span of grades usually beginning with grade 9 and ending with grade 12).

(8) ''Industrial arts program'': Those education programs:

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

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

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

RULE III ELIGIBILITY REQUIREMENTS FOR SCHOOL DISTRICTS A school district must have operated a secondary vocational education or industrial arts program for a year to be eligible. Funds will be allocated to the appropriated amount in accordance with the following priorities:

1) schools which have operated approved secondary vocational education programs in school years 1976-77, 1977-78, or 1978-79; 2) schools which operated secondary vocational programs which were not approved during the 1978-79 school year and which can provide required information on program costs; 3) schools which intend to institute a vocational program for the first time in the 1979-80 school year.

RULE IV PROCEDURES FOR APPLYING To apply, school districts must submit to the Superintendent of Public Instruction:

(1) A Local Plan for Vocational Education (Form VZ 0379). This plan is a summary of all vocational programs planned for fiscal years 1978-82. (School districts which submitted plans in FY 1978 or FY 1979 need not resubmit.)

(2) A Proposal for Vocational Education Programs (Form VZ 0279). For each six-digit Office of Education Code (O.E. Code) occupational program for which the school district is requesting funding, a separate proposal must be submitted.

(3) An Addendum for Each Cooperative Vocational Education Program (Form F 1707). For each program utilizing the cooperative method of instruction, a separate addendum must be attached to the Proposal for Vocational Education Program (Form VZ 0279).

(4) A Certified Expenditure Report (Form VZ 0579). All school districts applying must certify that expenditures made by the district to support additional cost items in vocational programs will be maintained at the previous year's level and that supplemental funds provided by this grant will actually increase expenditures by the amount of this grant. A Certified Expenditure Report (Form VZ 0579) must be submitted to the Superintendent of Public Instruction by July 15.

RULE V FUNDING FORMULA The following procedure shall govern the allocation and distribution of vocational education funds:

(1) Only programs meeting the eligibility requirements of III above and approved by the Superintendent of Public Instruction shall receive a supplemental vocational education allocation.

(2) All approved programs shall be placed into one of five categories according to the cost of the program. The assignment of programs to categories is subject to annual review and adjustment. A list of programs and the assigned categories will be distributed annually to school districts along with program applications (Form VZ 0279). Each category must carry the following weight factor:

| Category | Weight |
|---|---|
| I | .25 |
| II | .20 |
| III | .15 |
| IV | .10 |
| V | .05 |

(3) The additional average number belonging may be used for budgeting purposes for the ensuing year. The following formula shall be used for this computation:

| Aggregate Days Belonging of Those Students Attending the Vocational Program | | No. Vo-Ed. Periods | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 180 Days | X | No. Periods in School Day | X | Vo-Ed Weight Factor | X | Local ANB Value | = | State Vo-Ed Funds |

RULE VI ACCOUNTING A school district receiving funds from this appropriation shall account for such funds in a subfund of the general fund.

RULE VII REPORTING School districts participating in this program shall annually report expenditures for each approved and funded program in the format and time specified by the Superintendent of Public Instruction.

4. The rules are proposed to implement the provisions of H.B. 537, Forty-Sixth Montana Legislature.

5. Any person may submit data, views or arguments concerning the proposed rules in writing to Betty Lou Hoffman, Director, Secondary Vocational Education, Office of Public Instruction, State Capitol, Helena, Montana 59601, no later than September 14, 1979.

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

7. The authority for the Superintendent to make the proposed rules is based on House Bill 537 and 20-3-106 (36) MCA. (R.C.M. 1947, 75-5707)

Georgia Rice
Georgia Rice
Superintendent of Public Instruction

Certified to the Secretary of State August 3, 1979.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules concerning grievances for State employees. ) NOTICE OF ADOPTION OF RULES ) ARM 2-2.14(64)-S14890 ) THROUGH 2-2.14(64)-S14930 ) PERTAINING TO GRIEVANCES

TO: All Interested Persons

1. On March 29, 1979, the Department of Administration published notice of the proposed adoption of rules concerning grievances for State employees at pages 273-279 of the 1979 Montana Administrative Register, issue number 6.

2. The agency has adopted the rules with the following changes: 2-2.14(64)-S14920 (Rule IV) GRIEVANCE AND COMPLAINT PROCEDURE, Section (a) fourth sentence will read as follows: Management has five working days to respond informally to the complaint or grievance. If management fails to respond within that time or if management responds to the employee's dissatisfaction, the employee may begin the Formal Grievance and Complaint Procedure. Section (b) ninth sentence will read as follows: The employee should receive a copy of the Hearing Committee's recommendation and may, subject to the Department Director's approval, state acceptance or rejection of the Hearing Committee's recommendation.

On the Employee Grievance Form after the Hearing Committee's Statement the Employee's Statement will read as follows: The Hearing Committee's ~~Decision~~ Recommendation (subject to the Department Director's approval) is:. Also on the Employee Grievance Form after the Department Director's Decision the language reads: Employee's ~~Statement~~ Response: The Department Director's Decision is ( ) Accepted and I hereby request cancellation of this grievance; ( ) ~~Rejected for the following reasons:~~ Not satisfactory and I reserve the right to pursue this grievance according to Step 3 of the Grievance Policy regarding further proceedings.

The agency has numbered the Rule ARM 2-2.14(64)-S14890 through 2-2.14(64)-S14930.

3. To improve clarity and to provide more realistic and expeditious policy procedures, the above appropriate language has been included in the final rule.

4. The agency has adopted the rule because of the critical need to provide equitable grievance procedures for State employees.

David Lewis

David Lewis, Director
Department of Administration

Certified to the Secretary of State JULY 30, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

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| In the matter of the amendment of ARM 32-2.6A(26)-S6025 and 32-2.6A(78)-S6330 to eliminate the requirement that bulls be tested for brucellosis at change-of-ownership or importation into Montana. | NOTICE OF AMENDMENT OF RULES RULES 32-2.6A(26)-S6025 AND 32-2.6A(79)-S6330 |

TO: All Interested Persons

1. On June 14, 1979 the Department of Livestock published notice of proposed amendments to rules 32-2.6A(26)-S6025 Testing of Animals and 32-2.6A(78)-S6330 Importation Requirements concerning the brucellosis testing of bulls at page 526 of the 1979 Montana Administrative Register, Issue No. 11.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received. The agency has amended the rules because after 3 1/2 years of testing no bulls have reacted to the brucellosis test except those which are known to come from infected herds. Approximately 25,000 bulls have been tested in this period with negative results. The department therefore believes that continued testing of bulls is an unnecessary expense to the livestock industry.

ROBERT G. BARTHELMESS,
Chairman, Board of Livestock

By:
James W. Glosser, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State August 7, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

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| In the matter of the adoption of rules relating to the handling of brucellosis quarantined herds. | ) ) ) ) | NOTICE OF THE ADOPTION OF RULES (Rule I 32-2.6A(26)-S6031 Procedure Upon Detection of Brucellosis) (Rule II - 32-2.6A(26)-S6032 Memorandum of Understanding) |

TO: All Interested Persons

1. On June 14, 1979 the Department of Livestock published notice of the proposed adoption of rules concerning the handling of brucellosis quarantined herds at page 517 of the 1979 Montana Administrative Register, Issue No. 11.

2. The Department has adopted the rules with a minor editorial change, but substantially as proposed.

3. No comments or testimony were received. The agency has adopted these rules in order to establish better communication and understanding of disease control methods between the department and owners of brucellosis affected herds.

ROBERT G. BARTHELMESS,
Chairman, Board of Livestock

By: James W. Glosser, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State August 7, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

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| In the matter of the amendment of ARM 32-2.6BI(1)-S660 relating to antibiotic residues in grade "A" pasteurized milk and milk products. | NOTICE OF AMENDMENT OF RULE 32-2.6BI(1)-S660 |

TO: All Interested Persons

1. On June 28, 1979 the Department of Livestock published notice of the proposed amendment of rule 32-2.6BI(1)-S660 Standards For Milk & Milk Products concerning antibiotic residues in grade "A" milk and milk products at page 638 of the 1979 Montana Administrative Register, Issue No. 12.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule to correct an oversight that occurred at the time the rule was initially adopted. The U.S. Public Health Service's Grade "A" Milk Ordinance requires that there be no detectible antibiotic residues in Grade "A" milk or milk product. This is because of the sensitivity of certain persons to antibiotics even when present in milk in extremely low quantities. Compliance with the Grade "A" Milk Ordinance is also necessary in order for Montana milk to qualify for interstate shipment.

ROBERT G. BARTHELMESS,
Chairman, Board of Livestock

By:
JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State August 7, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

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| In the matter of the amendment of rule 32-2.6BI(1)-S671 relating to mastitic milk. | ) ) ) ) | NOTICE OF THE AMENDMENT OF RULE 32-2.6BI(1)-S671 |

TO: All Interested Persons

1. On June 14, 1979 the Department of Livestock published notice of proposed amendment to rule 32-2.6BI(1)-S671 Mastitis Quarantine: Cows and/or Goats concerning the selling of mastitic milk at page 529 of the 1979 Montana Administrative Register, Issue No. 11.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The rule was amended in order to allow Grade "A" dairy producers to have a market for milk that is unusable for grade "A" purposes because of mastitis when the mastitis readings indicate the milk can be safely used for manufactured dairy product purposes.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State August 7, 1979.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF COSMETOLOGISTS

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| In the Matter of the Amendment) of Arm 40-3.30(8)-S30115 ) concerning lapsed licenses ) | NOTICE OF AMENDMENT OF ARM 40-3.30(6)-S30115 LAPSED LICENSES |

TO: All Interested Persons:

1. On June 28, 1979, the Board of Cosmetologists published a notice of proposed amendment of ARM 40-3.30(8)-S30115 concerning lapsed licenses at pages 640 and 641, Montana Administrative Register, 1979, issue no. 12.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received. The Board proposed the amendment to implement section 37-31-322 MCA, subsection (1) [66-816 (1) R.C.M. 1947] and to clearly define the requirements for reinstatement of a lapsed license that had lapsed for a period of time in excess of four (4) years, in order to guarantee the health, safety and welfare of the consuming public against unqualified practitioners.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF REALTY REGULATION

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| In the matter of the amendment) of ARM 40-3.98(6)-S9885 (5) ) (b) concerning franchising ) | NOTICE OF AMENDMENT OF ARM 40-3.98(6)-S9885 (5)(b) SET AND APPROVE REQUIREMENTS AND STANDARDS - FRANCHISING |

TO: All Interested Persons:

1. On June 28, 1979, the Board of Realty Regulation published a notice of proposed amendment of ARM 40-3.98(6)-S0885 subsection (5) (b) concerning franchising at page 642, Montana Administrative Register 1979, issue number 12.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received. The Board amended the subsection of the above stated rule as directed by Senate Joint Resolution No. 24 and in accordance with Senate Bill 427 of the 46th Legislature, the test of which sets forth the reasons for the amendment of the rule.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 7, 1979.

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

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| In the matter of the Amendments of ARM 40-3.66(6)-S66060 concerning Temporary License; ARM 40-3.66(6)-S66070 subsection (4)) concerning examinations; ARM 40-3.66(6)-S66085 subsection (3) concerning continuing education;) ARM 40-3.66(6)-S66090 subsection) (2) concerning reciprocity licenses; ARM 40-3.66(6)-S66100 concerning a fee schedule; and adoption of a new rule concerning standards for Nursing Home Administrators. | NOTICE OF AMENDMENT OF ARM 40-3.66(6)-S66060 TEMPORARY LICENSE; ARM 40-3.66(6)-S66070 (4) EXAMINATIONS; ARM 40-3.66(6)-S66085 (3) CONTINUING EDUCATION; ARM 40-3.66(6)-S66090 (2) RECIPROCITY LICENSES; ARM 40-3.66(6)-S66100 FEE SCHEDULE; AND ADOPTION OF ARM 40-3.66(6)-S6675 STANDARDS FOR NURSING HOME ADMINISTRATORS |

TO: All Interested Persons:

1. On May 24, 1979 the Board of Nursing Home Administrators published a notice of the above proposed adoption and amendments at page 460, 1979 Administrative Register Issue no. 10. Hearing was held pursuant to that notice on June 20, 1979 in Helena, Montana.

2. The Board has adopted the amendments and new rule as proposed with the following exceptions: (new matter underlined, deleted matter interlined)

"40-3.66(6)-S66100 FEE SCHEDULE ..... (4) Each person taking the examination shall pay an examination fee of $100. Each re-examination shall cost $100. (The Board notes this subsection in this adoption, not as a deletion, but to point out that said subsection is not being effected in this adoption but rather is being held for future consideration for adoption, until the Board receives further comment and direction from the Administrative Code Committee.)....."

"40-3.66(6)-S6675 STANDARDS FOR NURSING HOME ADMINISTRATORS .....(1).(l) Has willfully failed to correct deficiencies or failed to maintain corrective measures in the nursing home as cited by any agency of government which has nursing home administration responsibility. However, the Board may take disciplinary action under this subsection only when;

(i) Such correction of deficiencies or maintenance of corrective measures is reasonably within the licensee's power; and

(ii) the licensee has exhausted all administrative and legal remedies regarding such citation and it has been upheld, or the time for availing himself of those remedies has expired.

(m) Has failed to maintain or provide accounting of a patient's or resident's property or assets during

confinement in the nursing home. However, the administrator will be responsible only for that property with which he has been specifically entrusted by the resident, or that property over which the administrator has reasonable means of exercising security. ....."

3. Oral testimony was presented at hearing by three persons. Several other persons submitted written testimony in lieu of a personal appearance. The testimony generally objected to the increase in fees, and in several instances objected to subsection 12. (1).(m). stating that it was too general and imposed too much responsibility on the administrator for the property of the patient. In response to the objection to the fees, the Board simply states that the fees are expected to generate no more than the minimum amount essential to properly carry out the duties and responsibilities of the Board. In regard to the objections concerning the administrators' responsibility for property, the Board has responded, as will be noted in the above changes to the rule as proposed, to more specifically clarify under what circumstances the administrator will be held accountable.

One person objected that the proposed standards of conduct as set out in paragraph 12. of the notice are too general and asked that a memorandum or manual of clarification for each of the provisions be prepared and published along with the rule. The Board responds by stating that it believes the standards are written as specifically as possible and that administrators are capable of knowing and understanding the conduct which is expected by the rule. The Board further points out that if need for clarity in any particular provision arises that the Board's procedural rules for declaratory rulings are available.

The Administrative Code Committee submitted a letter under signature of Bob Pyfer, dated July 12, 1979 objecting to the imposition of an examination fee, pointing out the lack of statutory authority. As will be noted above, the Board has not adopted that particular provision at this point and is waiting for further clarification from the Code Committee, in response to the Board's presentation of budget estimates and request for reconsideration. The Committee further suggested that under paragraph 12. subsection (1) (1) that the rights of the administrator may be jeopardized by the proposal as written and said letter suggested alternatives. The Board's adoption as above noted in fact incorporates verbatim the language which the Committee suggested in its letter as a proper correction.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 7, 1979.

46-2.10(18)-S11440(1)(i) SOCIAL AND REHABILITATION SERVICES

EMERGENCY RULES TO AMEND

Statement of reasons for emergency.

Home Health Service is a mandatory provision under the Medicaid program and the Department is obligated to see that this service is available to Medicaid recipients through licensed agencies.

There are currently 17 licensed home health agencies in Montana. As a result of 46-2.10(18)-S11465 Medical Assistance, Prohibition of Certain Provider Fee Increases, 3 of the 17 agencies dropped participation in the Medicaid program. This has adversely affected the health and welfare of Medicaid recipients in two localities; Great Falls and Miles City. Nine of the remaining 14 Medicaid participating home health agencies have continued to provide this necessary service to Medicaid recipients for a substantially lower reimbursement rate than their current costs, which is reflected in Medicare payment.

On June 29, 1979, 46-2.10(18)-S11465 Medical Assistance, Temporary Prohibition of Certain Provider Fee Increases was amended as an emergency rule, continuing the prohibition of fee increases to Medicaid providers except when a speciality group demonstrates to the Department that current Medicaid rates are adversely affecting the program.

On July 19, 1979, 52% of licensed home health providers in Montana, represented by the Montana Association of Home Health Agencies, demonstrated to the satisfaction of the Department, that current Medicaid rates are adversely affecting home health providers. They further demonstrated to the Department that a continued freeze on their rates would result in more agencies dropping from the Medicaid Program unless there is a rate adjustment for R.N. and home health aide visits retroactive to July 1, 1979. Therefore, the Department finds that there is eminent peril to public health, safety, and welfare, requiring the Department to amend 46-2.10(18)-S11440(1)(i) as an emergency rule on July 31, 1979, as follows:

(i) Home health care services are "visiting nurse services and other home care therapy requested by the physician and provided through a public or private non-profit agency operating in accordance with the policies and standards established by the State Department of Health." Such services may be given in the home of the individual. These services shall be provided in the home on a visit basis to the patient who is under the care of a physician. In those communities where nursing services have not been developed under the above definition, arrangements may be made for the employment of a registered nurse on a part-time basis or an hourly basis in accordance with the policies and standards established by the State Department of Health. These services may be given only to those recipients who live in their own homes. Effective

7/1/79, Medicaid reimbursement to those home health agencies providing service at a payment below their costs may be increased to a maximum of $21.00 per R.N. visit, and $13.00 per nurses aide visit provided said rates do not exceed the lessor of:

(i) Medicare rates paid to each individual agency and,

(ii) The individual agency's charges to the private paying public.

No other changes in the remainder of the rule.

(History: Section 53-6-113 MCA (Sections 71-1511 R.C.M. 1947); IMP, Sec. 53-6-141 MCA (Sec. 71-1517 R.C.M. 1947); NEW, Eff. 11/4/74; EMERG, AMD, Eff. 7/1/75; AMD, Eff. 8/12/75; AMD, Eff. 5/6/76; AMD, Eff. 7/5/76; AMD, Eff. 12/24/77; AMD, Eff. 2/25/78; AMD, Eff. 8/25/78; AMD, 1978 MAR, p. 1363, Issue No. 11, Eff. 9/15/78.)

The authority to make these changes in the rule is based upon 53-6-113, MCA (71-1511(6) R.C.M. 1947) with the implementing authority being 53-6-111, MCA (71-1511 R.C.M. 1947) and 53-6-141, MCA (71-1517 R.C.M. 1947).

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 7, 1979.

VOLUME NO. 38 OPINION NO. 29

ATTORNEYS - Employment and compensation of attorneys in connection with Special Improvement Districts;
ATTORNEYS FEES - Employment and compensation of attorneys in connection with Special Improvement Districts;
MUNICIPAL CORPORATIONS - Employment and compensation of attorneys in connection with Special Improvement Districts;
LAND USE - Employment and compensation of attorneys in connection with Special Improvement Districts;
MONTANA CODES ANNOTATED - Sections 7-12-4101.

HELD: A developer seeking creation of a special improvement district has no authority to designate a private attorney to perform legal services in connection with the SID or to fix the fee of such legal services.

18 July 1979

Mae Nan Ellingson
Deputy City Attorney
201 West Spruce Street
Missoula, Montana 59801

Dear Ms. Ellingson:

You have requested an opinion concerning the following question:

> Can a city deny a developer's request to designate a private attorney as the attorney for a special improvement district and specify the amount of the attorney's fee?

In conjunction with your request, you have supplied this office with background information indicating that the city of Missoula has customarily employed the city attorney's office to do all legal work in connection with special improvement districts (SIDs). The city pays a one percent fee for those services. However, several developers have recently submitted SID petitions setting forth attorney's fees of three and one-half percent as expenses of proposed districts and designating named, private attorneys to perform legal services in connection with the districts. Attempts by developers to designate private attorneys for SIDs have occurred in connection with subdivisions in which

developers still own all of the lots. Costs in such cases are typically passed on to subsequent third party purchasers. You have pointed out that the relatively large, 3½ percent fee which developers propose to pay their designated private attorneys could be used to underwrite other legal costs associated with subdivisions.

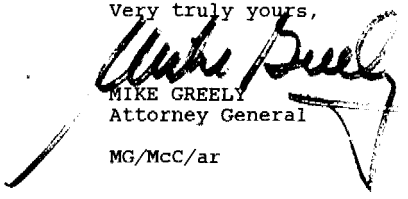
Notwithstanding, developer's designations of private attorneys, the Missoula City Council has not contracted with nor requested any attorney designated by a developer to perform legal services in connection with an SID and has continued to employ the city attorney's office to perform SID legal work. Nonetheless, the city is presently being asked by one developer's attorney for substantial legal fees for services allegedly rendered in connection with an SID. Several items enumerated in the attorney's bill for service do not relate to the SID but rather to other legal work involving the subdivision work, strengthening the city's fear that developers could use SID legal fees to underwrite other legal costs of their subdivisions.

The contention that a developer can compel a city to employ and pay a private attorney designated by him is preposterous. Special improvement districts are creatures of statute. The power to create them is expressly and unequivocally vested in the city, specifically the city council. Section 7-12-4101, et seq., MCA (§11-2201, et seq., R.C.M. 1947). The statutes vesting that power in the city council "measures its authority ***." Johnston v. City of Hardin, 55 Mont. 574, 580, 179 P.24 (1919). There is nothing whatsoever in the provisions governing the establishment of SIDs which remotely suggests that the city must hire an attorney designated by a developer or that a developer may determine the amount of SID legal fees. Moreover, a city council may not delegate its statutory authority to private individuals. Haines v. City of Polson, 123 Mont. 469, 482-483, 215 P.2d 950 (1950). Unless the city contracts with a private attorney to perform specific legal services for an SID it has no statutory duty or power to compensate a private attorney.

THEREFORE, IT IS MY OPINION:

A developer seeking creation of a special improvement district has no authority to designate a private attorney to perform legal services in connection with the SID or to fix the fee for such legal services.

Very truly yours,



MIKE GREELY
Attorney General

MG/McC/ar

VOLUME NO. 38 OPINION NO. 30

ADMINISTRATIVE PROCEDURE - Administrative Procedure Act meets existing due process standards;
CITIES AND TOWNS - A city has the power to regulate garbage and refuse collection;
CITIES AND TOWNS - Power to levy special tax for garbage collection services;
CITIES AND TOWNS - Local open burning policies are subordinate to Department of Health and Environmental Sciences Rules;
CONSTITUTIONAL LAW - Due Process and Equal Protection requirements met by open burning restrictions;
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES - Power to regulate open burning and pollution by adopting rules superior to local policies;
SANITATION - Garbage collection, open burning;
TAXATION - Garbage collection is a tax supported service;
TAXATION - Cities power to levy special tax for garbage collection.

HELD: 1. The tax-supported garbage hauling service provided by the City of Kalispell comes within the jurisdictional scope of ARM 16-2.14(1)-S1490(1)(d).

2. The entire area covered by a private garbage hauler or the tax supported service is within the prohibited area for open burning.

3. ARM 16-2.14(1)-S1490(d) violates no constitutional standards of due process or equal protection.

19 July 1979

Norbert F. Donahue
City Attorney
P.O. Box 1035
Kalispell, Montana 59901

Dear Sir:

You have requested my opinion on the following questions:

1. Does a "special tax" levied pursuant to section 7-6-4406, MCA, to carry out the city's authority under section 7-14-4106(1),

MCA, constitute Kalispell's garbage collection service as a "tax supported service" within the meaning of ARM 16-2.14(1)-S1490 (1)(d).

2. If so, is the entire area covered by a private garbage hauler included within the prohibited area for open burning?

3. Does the prohibition of ARM 16-2.14(1)-S 1490(1)(d) constitute a violation of constitutional due process and equal protection provisions because the denial of a reasonable "open burning" period applies in some areas but not in others without sufficient reasonable connection or compelling public interest for their difference?

The authority in question is an administrative rule adopted by the Department of Health and Environmental Sciences in May of 1978. That rule provides in relevant part:

16-2.14(1)-S1490 OPEN BURNING RESTRICTIONS.

(1) Except as specified in subsection (2), no person shall cause, suffer or allow an open outdoor fire unless an air quality permit has been obtained, and further provided that the fire authority for the area of the burn shall be notified of intent to burn giving location, time and material to be burned and that proper fire safety directions given by the fire authority be complied with. A burning permit is required from the responsible fire control agency during the closed or extended fire season (May 1 --September 30 or as extended pursuant to section 28-103 and 28-603, R.C.M. 1947). Reasonable precautions shall be taken to eliminate smoke when the purpose for which the fire was set has been accomplished. A permit shall be allowed only under the following conditions:

* * *

(d) Materials to be burned originate on an individual's premises, excluding commercial, industrial and institutional establishments, where no provision is available by private hauler providing a public service or a tax supported service for collection of the material to be burned and no public nuisance is created.

Section 7-14-4106(1), MCA, which you cite, specifically allows a special tax for purposes described in section 7-14-4105(3), MCA, which provides:

> The city or town council has the power to:
> * * *
> (3) regulate the use of sidewalks and require owners of adjoining premises to keep the same free from snow or other obstruction.

It does not allow a special tax for city garbage collection services. The authority for that tax is section 7-6-4401, MCA:

> The city or town council has the power to levy and collect taxes for general and special purposes on all property within town or city subject to taxation under laws of the state.

That purpose is specifically described in section 7-14-4105(2), MCA:

> The city or town council has power to...
> * * *
> (2) regulate the disposition and removal of ashes, garbage, or other offensive matter in any street or alley, on public grounds, or on any premises.

The words of the statutes are to be interpreted by their plain meaning in their usual and accepted manner while attempting to accomplish the intent of the legislature. Section 1-2-106, MCA, Burritt v. City of Butte, 161 Mont. 530, 508 P.2d 563 (1973). It is clear that in its ordinary general usage Kalispell's tax supported garbage service comes within the context of ARM 16-2.14(1)-S1490(1)(d) and is therefore subject to its provisions.

The tax authorized by the preceding statutes is a tax supported service within the context of ARM 16-214(1)-S1490(1)(d).

Where two clauses or phrases of a statute are expressed in the disjunctive they are coordinate and either is applicable to the situation to which the terms relate. Shields v. Shields, 115 Mont. 146, 139 P.2d 528 (1943). The word "or" is a common disjunctive. The rule in question applies to the complete area covered within and outside of the city which is serviced by either a private or tax supported hauler. The statute has no expressed limitation and therefore should have general application in the state.

The power to control pollution and public health is given in section 75-2-111, MCA. Section 75-2-301, MCA, empowers the city or municipality to make more stringent rules and brings about the necessary implication that the city or municipality may not lessen the existing standards already set by the state. See State ex rel. Jones v. Giles, 168 Mont. 130, 541 P.2d 355 (1975).

When the object and tendency of legislation is to promote public health, there is no invasion of constitutional rights based merely upon interference with liberty or property. Ruona v. City of Billings, 136 Mont. 554, 323 P.2d 129, 31 (1958). For example, the Board of Health and Environmental Sciences may constitutionally prohibit open burning without a permit. State ex rel. Department of Health v. Lincoln County, ____ Mont. ____, 583 P.2d 1293, 1295 (1978).

It is apparent from the rule in question that the Department of Health and Environmental Sciences felt that preservation of air quality required utilization of garbage collection service wherever available. In areas without a garbage collection service, it would be impractical to require hauling, while at the same time those areas without a collection service are usually sparsely populated and the detrimental impact of open burning on the air would be less severe.

Those distinctions are reasonable and justify applying the open burning rule in one area and not in others.

Compliance with the notice and hearing provisions of the Montana Administrative Procedure Act in adopting the rule would meet accepted standards of due process.

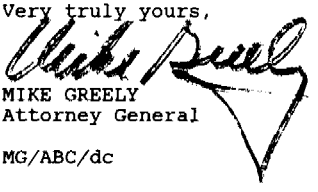
THEREFORE IT IS MY OPINION:

1. The tax-supported garbage hauling service provided by the City of Kalispell comes within ARM 16-2.14(1)-S1490(1)(d).

2. The entire area covered by a private garbage hauler or the tax supported service is within the prohibited area for open burning.

3. ARM 16-2,14(1)-S1490(d) violates no constitutional standards of due process or equal protection.

Very truly yours,



MIKE GREELY
Attorney General

MG/ABC/dc