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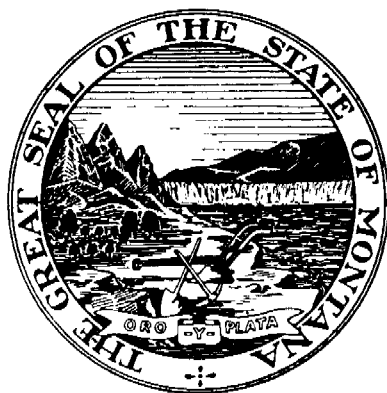
MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA

**1979 ISSUE NO. 17
PAGES 1036-1085**



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. 17

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the Montana Administrative Register.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC HEARING FOR
of a rule concerning temporary) ADOPTION OF A RULE
connections to electrical power) Temporary electrical
by power suppliers before in-) connections.
spection by the state.

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building Auditorium, 111 Sanders, Helena, Montana, to consider the adoption of a rule concerning temporary connections to electrical power by power suppliers before inspection by the Division's electrical inspectors.

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

3. The proposed rule reads as follows:

RULE I TEMPORARY ELECTRICAL CONNECTIONS (1) Power suppliers are not to energize installations without an inspection and approval of the installation by an electrical inspector employed by the Division.

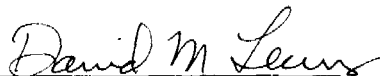
(2) An exception to this requirement is that power suppliers may make temporary electrical connections, prior to the Department's inspection and approval, for a period not exceeding 14 days, in cases of an emergency where it is necessary to have immediate electrical power, i.e. following a fire, flood, tornado, and other extreme cases.

4. The Division is proposing this rule as a result of legislative action during the Forty-sixth Legislature, which amended Section 50-60-605, MCA, to allow for temporary electrical connections by the power suppliers, to electrical power, before inspection and approval by the Department's electrical inspectors.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Sections 50-60-605, 50-60-203, and 50-60-603, MCA. The authority of implementation to enforce the proposed rule is found in Sections 50-60-103, 50-60-604, and 50-60-605, MCA.

A handwritten signature in cursive script, reading "David M. Lewis". The signature is written in dark ink and is positioned above a horizontal line.

David M. Lewis
Director
Department of Administration

Certified to the Secretary of State September 4, 1979

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of Rule ARM 2-2.11(6)-S11440) AMENDMENT OF RULE
concerning the enforcement of) Elevator Code Enforcement
the elevator code.) Program.

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of Rule ARM 2-2.11(6)-S11440 concerning the elevator code enforcement program.

2. The proposed amendments add to the present rule 2-2.11(6)-S11440 found in the Administrative Rules of Montana. The proposed amendments add rules concerning the certification of maintenance and insurance companies to do elevator inspections as well as limiting inspections to passenger elevators and escalators in "public places", as directed by the 46th Legislature in Section 50-60-101, MCA.

3. The proposed amendments read as follows:

(7) Certification of Maintenance and Insurance Companies as Inspectors. (a) The competency of each elevator inspector shall be certified by each insurance or maintenance company to the Division in writing prior to making inspections.

(b) In addition, each elevator inspector must have passed an examination given by:

(i) Elevator Educators
4126 Westview Road
Baltimore, Maryland 21218
(301) 467-1309;

(ii) National Association of Elevator Safety Authorities
P. O. Box 15643
Phoenix, Arizona 85060
(602) 255-5795; or

(iii) any other nationally recognized organization certifying elevator inspectors that has been approved by the Division.

(c) After satisfaction of the above requirements, the Division will issue the inspector a card showing him as a certified inspector for the maintenance or insurance company by which he is employed.

(d) Once certified, the inspectors and their employing company may do elevator inspections that will be accepted by the Division in lieu of its own.

(e) The Division may revoke an inspector certification because of misrepresentation, fraud, abuse of power, or other cause that makes continued certification of the inspector undesirable.

(8) Inspections by Certified Maintenance or Insurance Companies. The Division may accept inspections of elevators, escalators and moving walks in public places reported by certified inspectors subject to the following conditions:

(a) Each installation shall be inspected at least once every twelve months.

(b) A detailed report of each unit inspected shall be filed with the Division within 14 days after inspection on a printed form furnished by the Division. Such report shall show all respects in which the installation fails to comply with the code requirements of UBC, Chapter 51 and Appendix Chapter 51 as well as the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1.

(c) A certificate of inspection shall be issued by the Division upon receipt of the report of the insurance or maintenance company that the unit is in an acceptable state of repair for receiving certification.

(d) The insurance or maintenance company shall use all reasonable diligence to secure compliance with the Division's rules. If unsuccessful, it shall so report to the Division. If it then becomes necessary for the Division to make an inspection, the fee for each unit inspected will be charged as per other inspections made by the Division, as listed in Rule 2-2.11(1)-S1100, of the Administrative Rules of Montana.

(e) The Division may inspect any installation which is also inspected by a certified inspector employed by an insurance or maintenance company. Whenever the Division inspection confirms that the insurance or maintenance company inspection report is incomplete, invalid, or unacceptable for any reason, the Division will assess the insurance or maintenance company the fee for inspection by the Division, as listed in Rule 2-2.11(1)-S1100, of the Administrative Rules of Montana.

(f) Those units inspected by certified inspectors of insurance or maintenance companies shall pay the reduced fees, as listed in Rule 2-2.11(1)-S1100, of the Administrative Rules of Montana. The reduced fees are charged to cover costs of issuing the certificate of inspection, maintaining a complete record system for all units in Montana, consultation with owners, maintenance of the inspector certification program, cost of hearings for contested cases, and other enforcement costs.

(9) Units Covered by the Elevator Inspection Program. The units included in the elevator inspection program shall include passenger elevators, escalators and moving walks in "public places" as defined in Section 50-60-101, Subsection (11), MCA. Elevators that do not carry passengers, do not need to be inspected by the Division.

4. The Division is proposing the amendments to its rule as per the changes made to the elevator inspection program by

the 46th Legislature in Section 50-60-101, MCA.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Division to make the proposed amendment is based on Section 50-60-203, and 50-60-101, MCA. The power for implementation is contained in Section 50-60-103, and 50-60-101, MCA.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of amendment) NOTICE OF PUBLIC HEARING ON
of Rules ARM 2-2.11(6)-S11400) AMENDMENT OF RULE
and 2-2.11(6)-S11410, concern-) Uniform Plumbing Code
ing adoption of the Uniform)
Plumbing Code by reference.)

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of Rules 2-2.11(6)-S11400, titled "DEFINITIONS" and 2-2.11(6)-S11410, titled "INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE".

2. The proposed amendment replaces present Rules 202.11(6)-S11400 and 2-2.11(6)-S11410, found in the Administrative Rules of Montana. The proposed amendments adopt the 1979 Edition of the Uniform Plumbing Code by reference.

3. The rules as proposed to be amended read as follows:
2-2.11(6)-S11400 DEFINITIONS (1) Bureau: The term "Bureau" used herein means the Mechanical Safety Bureau of the Building Codes Division of the Department of Administration of the State of Montana.

(2) Plumbing Inspector: The terms "Plumbing Inspector" means any person approved by the Bureau to enforce the provisions of the plumbing code.

~~(3) Frost-Closure-Area: For the purpose of this code, the entire state of Montana is considered a frost-closure area.~~

~~(4)~~ (3) Permit: A plumbing permit is a document that is issued by the Bureau authorizing the applicant to do plumbing work.

2-2.11(6)-S11410 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The Building Codes Division of the Department of Administration adopts and incorporates by reference herein the Uniform Plumbing Code, 1976 1979 Edition, with the following amendments thereto:

- (a) The following exceptions hold true throughout the entire code:
- (i) Asbestos-cement vent pipe is not an acceptable material in the state of Montana for DWV.
 - (ii) Homogenous bituminized fiberdrain and sewer pipe is not ~~at~~ an acceptable material in the state of Montana, except in drain fields.
- (b) The following amendments are listed according to section and page number of the Uniform Plumbing Code:
- (i) Sec. 20.3, Violation and Penalties, page 2a. This entire section is to be deleted and replaced by the violation and penalty procedure contained in ~~Sec-59-21197~~ ~~R-2-M, 1947~~ Section 50-60-110 and 50-60-515, MCA.
 - (ii) Sec. 20.5, Work Not Requiring a Permit, page 3a. This section is to be deleted and replaced with the following wording: "No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of Section ~~66-2426-ex-66-2401~~ 50-60-503 or 50-60-506, MCA. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this act. Factory-built buildings covered by an insignia issued by the Building Standards Bureau need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on site work, as provided for in these rules."
 - (iii) Sec. 20.7, Cost of Permit, page ~~4-5a~~ 4a. Delete the Schedule of Fees and replace with the following schedule:

"For issuing each permit @\$5.00*
For each plumbing fixture or trap or set of
fixtures on one trap (including water,
drainage piping and backflow protection
therefore) @ 2-00 3.00
Water Service- domestic or commercial . . . @ 2-00 3.00
For each building sewer and each trailer
park sewer @ 5.00
Storm drains and storm drainage @ 2.00
For each water heater @ 2-00 3.00
For each gas piping system of one (1) to
four (4) outlets @ 2-00 3.00

For each gas piping system of five (5) or more per outlet.	@ 0-50	0.75
For each industrial water pre-treatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps	@ 3-00	4.00
For installation, alteration or repair of water piping and/or water treatment equipment	@ 2-00	3.00
For repair or alteration of drainage or vent piping.	@ 2-00	3.00
For each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore	@ 2-00	3.00
For vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures including necessary water piping--one (1) to four (4).	@ 2-00	3.00
Five (5) or more, each	@ 0-50	0.75
<u>Reinspection (provided the \$15 does not exceed the original permit fee in which case the original fee will be charged) . . .</u>		
	@15.00	

* Except for replacement of water heaters.

(iv) Sec. 20.14 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by Sec. 50-60-303, MCA, must provide an appeal procedure. The Division and State of Montana, however, will use the applicable provisions of the Montana Administrative Procedures Act in all cases of appeal, in lieu of Sec. 20.14.

~~(v)~~ (v) Sec. 203(a), Use of Copper Tubing, page 14. Delete "DWV" and substitute "L".

~~(vi)~~ (vi) Sec. 203(c), Use of Copper Tubing, page 14. Delete "or underground outside of structures.", ending the sentence with "building."

~~(vii)~~ (vii) Sec. 401(a), Materials, Item 2, page 14 37. Amend to read as follows: "2. ABS or PVC installations limited to residential, commercial, institutional, and industrial construction not more than two (2) stories in height." Provided that ABS or PVC may be used for horizontal branch lines regardless of the number of stories.

~~(viii)~~ (viii) Sec. 406(a), Cleanouts, page 38 40. Line 4 shall be changed to read as follows: "... shall be provided with a cleanout for each fifty (50) feet ...", rather than "...100 feet..." Also add: "Lines six (6) inches in size and larger shall be provided with a cleanout for each one hundred (100) feet or fraction thereof, in length of such piping."

~~(ix)~~ (ix) Sec. 407, Grade of Horizontal Drainage Piping,

page 39 41. Change "four (4) inch" to "two (2) inch," and delete "When first approved by the Administrative Authority."

~~(ix)~~ (x) Sec. 503(a), Materials, Item 2, page 42 45. Amend to read as follows: "2. ABS or PVC installations limited to residential, commercial, institutional, and industrial construction not more than two (2) stories in height."

~~(x)~~ (xi) Sec. 506(a) and (c), Vent Termination, pages 43-44 46-47. Change "six inches" to "twelve (12) inches".
~~(xi) Sec. 506, Vent Termination, page 44, Add "(x) All vent through three (3) inch must be increased one (1) pipe size with a minimum size going through the roof of two (2) inch."~~

(xii) Sec. 1009(h), Size of Portable Water Piping, page 78 79. Amend the second paragraph to read: "No building supply pipe shall be less than three-quarter (3/4) inch in inside diameter."

(xiii) Sec. 1101, Sewer Required, page 83 85. Delete (c), (d) and (e).

(xiv) Sec. 1109 through 1118, Delete these sections completely. The section on private sewer systems shall be as required by the State Department of Health and Environmental Sciences.

(xv) Appendix E, Mobile Home Parks, pages 147-154 162-174 Delete.

(xvi) Appendix G, Swimming Pools, pages 155-156 175-176. Delete.

(xvii) Appendix C, Minimum Plumbing Facilities, pages 140-141 152-153. Delete. Rule ARM 2-2.11(1)-S11070, Minimum Required Plumbing Fixtures will be used in lieu of Appendix C.

(xiii) Appendix I, Private Sewage Disposal Systems, pages 161-172 177-191. Delete..

(2) The purpose of this code is to provide minimum requirements and standards for plumbing installations for the protection of the public health, safety and welfare.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Plumbing Code. In addition, fees must be such that costs of providing the service can be covered. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA. The authority for implementation is provided in Sections 50-60-103, 50-60-104 and 50-60-504, MCA.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of amendment) NOTICE OF PUBLIC HEARING ON
of Rules ARM 2-2.11(2)-S11110) AMENDMENT OF RULE
2-2.11(2)-S11130, 2-2.11(2)-) State Electrical Code
S11140, 2-2.11(2)-S11160 con-)
cerning the state electrical)
code.

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of Rules ARM 2-2.11(2)-S11110, titled "ELECTRICAL PERMIT", ARM 2-2.11(2)-S11130 titled "ELECTRICAL INSPECTION CERTIFICATE", and ARM 2-2.11(2)-S11140 titled "ELECTRICAL INSPECTION FEES".

2. The proposed amendments replace present Rules 2-2.11(2)-S11110, 2-2.11(2)-S11130, 2-2.11(2)-S11140 and 2-2.11(2)-S11160 found in the Administrative Rules of Montana. The proposed amendments are editorial to improve the clarity of the rules as well as for the purpose of deleting expired sections that served as interim measures.

3. The rules as proposed to be amended read as follows:
2-2.11(2)-S11110 ELECTRICAL PERMIT (1) An electrical permit is required for any installation in any new construction or remodeling or repair. EXCEPTION: Maintenance of electrical wiring, circuits, apparatus or equipment by any corporation, partnership, or association, as a part of its plant or operations.

(2) Prior to or upon commencement of any electrical installation, the installer shall submit an official "Request for Electrical Inspection Permit" to the ~~area-inspector~~ Electrical Safety Bureau in Helena with fee(s) as provided in Sec. 2-2.11(2)-S11140, infra. "Request for Electrical Inspection Permit" forms shall be made available by the Department and may also be available at any power supplier or the electrical inspector.

(3) Upon receipt of the "Request for Electrical Inspection Permit" with the applicable fee(s), the Department shall ~~issue~~ validate the official "Electrical Inspection Permit" covering the installation.

(4) "Electrical Permits" on which the fees, as provided in Sec. 2-2.11(2)-S11140, infra., are under \$100.00 shall be valid for a period of one year from the date of issuance.

(5) The "Electrical Inspection Permit" is not transferable.

2-2.11(2)-S11130 ELECTRICAL INSPECTION CERTIFICATE PERMIT

(1) Upon final inspection, the state inspector shall date and issue sign the "Inspection Certificate Permit"

~~properly-dated-and-signed~~, either approving or disapproving the installation. If the installation is disapproved, notice thereof, together with reasons for disapproval, shall be given by the inspector to the installer. After removal of the cause of disapproval, the installer shall make a request for reinspection, of the inspector, and upon payment of a reinspection fee, as provided in Sec. 2-2.11(2)-S11140, and approval of the inspector, ~~he the inspector~~ shall issue an approved "Inspection ~~Certificate~~ Permit", and so tag the installation.

2-2.11(2)-S11140 ELECTRICAL INSPECTION FEES (1) Residential: New construction and extensive remodeling based on square foot area. Included shall be all finished and unfinished rooms, including basements and residential garages. Multifamily dwellings or apartments, up to and including four (4) units within a single structure, come under this section and each unit shall be counted as an individual residence.

(a) Up to 4000 sq. ft. (minimum \$15.00) ... \$0.02 per sq. ft. Over 4000 sq. ft. ... \$80.00 plus \$0.01 per sq. ft. over 4000.

(b) Residential Electric Space Heating... \$0.50 per KW. (These fees are in addition to fees for square footage covered in (a) above.)

(2) Mobile Homes or Modular Homes: Each connection or reconnection ... \$15.00.

(3) Water Pumps: Any type. Up to 25 H.P.... \$15.00.

26 H. P. and over ... \$15.00 plus \$0.03 per H.P. over 25 H.P.

(4) Electrically Driven Irrigation Machines: Center pivot \$10.00 plus \$5.00 per tower or drive motor. Other types \$10.00 plus \$5.00 per motor. Note: Electrical supply to irrigation machine shall be in addition to above and according to (8) below.

(5) Requested Inspections: Minimum one (1) hour ... \$15.00 per hour.

(6) Reinspection ... \$15.00

(7) Factory-Built Buildings: No fee prescribed in these schedules--fee to be as provided by insignia fees of the Building Standards Bureau.

(8) All Other: Fees listed in this section shall apply to any and all electrical installations not specifically mentioned elsewhere in this rule. The wiring cost shall be the cost to the owner of all labor charges and all wiring materials and equipment installed as part of the wiring system. For uniformity of fee, when labor is performed by the owner, such labor cost shall be based upon the market value of said labor and materials and equipment shall be based at actual cost. The value of factory installed wiring, switches and controls on equipment shall be included in wiring costs. Value of motors and appliances

need not be included.

Multifamily dwellings or apartment with five (5) or more dwellings come under this schedule.

Mobile Home Parks - Distribution wiring including pedestal or service is under this schedule. (This does not include or permit the connection of the mobile home.)

Recreational Vehicle Parks - Service conductors distribution and lot supply to individual units come under this schedule plus \$3.00 per lot.

<u>Total Job Cost</u>	<u>Inspection Fee</u>
\$ 0 - \$1,000	\$15.00
\$ 1,000 - \$10,000	\$15.00 for 1st \$1,000 plus 1½% of balance.
\$10,000 - \$50,000	\$150.00 for 1st \$10,000 plus .50% of balance
More than \$50,000	\$350.00 for 1st \$50,000 plus .25% of balance.

~~(9)---The above fee schedule shall become effective July 1, 1978.---Until that date, the following fees shall be in effect:~~

~~(a)---Residential---New construction and extensive remodeling based on square foot area---Included shall be all finished and unfinished rooms, including basements and residential garages.~~

~~Multifamily dwellings or apartments, including four (4) units, come under this section and each unit shall be counted as an individual residence.~~

~~Not more than 1,000 sq. ft.-----\$12.00
Over 1,000 sq. ft. but not more than 1400 sq. ft.---\$18.00
Over 1,500 sq. ft. but not more than 2000 sq. ft.---\$24.00
More than 2,000 sq. ft.---\$24.00 plus \$1.00 per each
100 sq. ft. or fraction thereof in excess of 2000 sq. ft.~~

~~When there is No Change in Service:~~

~~Extension of additon to existing circuit-----\$ 5.00
Installation of one new circuit-----\$ 5.00
Installation of sub-panel or additional circuits same
as for square footage size.~~

~~(b)---Residential Electric Space Heating---1 to 5 KW---\$5.00,
plus \$2.00 for each 5 KW or fraction thereof in excess of
5 KW.---These fees are in addition to fees for square footage
covered in (a)---~~

~~(c)---Domestic Water Pumps---\$3.00 in additon to required~~

square-footage-fee---\$2.00-when-separate-from-residential-construction.

(d)---Mobile-Homes---Each-connection-or-reconnection--Service-rated-100-amperes-or-less---\$8.00-plus-\$3.00-for each-additional-feeder-or-branch-circuit-connected-at-same time-as-mobile-home---Service-over-100-amperes---\$10.00 plus-\$3.00-for-each-additional-feeder-or-branch-circuit connected-at-same-time-as-mobile-home.

(e)---Other---Fees-listed-in-this-section-shall-apply-to any-and-all-electrical-installations-not-specifically-men- tioned-elsewhere-in-this-rule---The-wiring-cost-shall-be the-cost-to-owner-of-all-labor-charges-and-all-wiring materials-and-equipment-installed-as-part-of-the-wiring system---For-uniformity-of-fee,-when-labor-is-performed by-the-owner,-such-labor-cost-shall-be-based-upon-the market-value-of-said-labor-and-materials-and-equipment shall-be-based-at-actual-cost---The-value-of-factory-in- stalled-wiring,-switches-and-controls-on-equipment-shall be-included-in-wiring-costs---Value-of-motors-and-appli- ances-need-not-be-included.

Multifamily-dwellings-or-apartments-with-five-(5)-or more-dwellings-come-under-this-schedule-- Mobile-Home-Parks---Distribution-wiring-including-pedestal or-service-is-under-this-schedule---(This-does-not-include or-permit-the-connection-of-the-mobile-home.) Recreational-Vehicle-Parks---Service-conductors-distribu- tion-and-lot-supply-to-individual-units-come-under-this schedule-plus-\$3.00-per-lot.

Total-Job-Cost

Inspection-Fee

\$0-to-\$500	\$10.00
\$501.00-to-\$1,000.00	\$10.00-for-first-\$500-plus 1½%-of-balance-of-total-cost.
\$1,000.00-to-\$10,000.00	\$17.50-for-first-\$1,000.00-plus 1%-of-balance-of-total-cost.
\$10,000.00-to-\$50,000.00	\$107.50-for-first-\$10,000.00 plus-.5%-of-balance-of-total-cost.
More-than-\$50,000.00	\$307.50-for-first-\$50,000.00-plus .25%-of-balance-of-total-cost.

(f)---Water-Pumps,-Each-Motor:

to-5-H.P.-\$8.00	26-to-100-H.P.-\$16.00
5-to-10-H.P.-\$10.00	101-to-200-H.P.-\$20.00
11-to-25-H.P.-\$13.00	Over-200-H.P.-\$20.00-plus \$4.00-per-100-H.P.-over-200-or fraction-thereof.

~~(g)--Electrically-Driven-Irrigation-Machines-
Center-pivot-\$10.00-plus-\$5.00-per-tower-or-drive-motor-
Other-types-\$10.00-plus-\$5.00-per-motor--Net--Elec-
trical-supply-to-irrigation-machine-shall-be-in-addition
to-above-and-according-to-(3)-above--
(h)--Reinspection--When-compliance-order-is-issued-and
corrections-have-not-been-made-in-prescribed-time-and-an
extension-has-not-been-requested-and-granted,--\$10.00
(i)--Requested-inspection-of-Existing-Wiring--\$11.00
minimum-for-one-hour-or-less--Over-one-hour-\$11.00-plus-
\$5.00-for-each-one-half-hour-or-portion-thereof-in-ex-
cess-of-one-hour-including-travel-time-
(j)--Temporary-Construction-Service--A-temporary-service
is-for-the-use-of-electrical-service-for-a-short-time-for
construction-purpose-only-and-will-be-removed--All-other
services-are-classed-as-permanent--Fee-\$8.00-~~

2-2.11(2)-S11160 WIRING STANDARDS (1) The following rules supplement or modify sections of the National Electrical Code Adopted under Sec. 2-2.11(2)-S11150:

- (1) NEC ARTICLE 110-2(SUPPLEMENTARY). When requested, complete wiring diagrams shall be provided.
- (2) NEC ARTICLE 110-3(a)(1) (MODIFICATION). Suitability of equipment shall be evidenced by listing or labeling, except as otherwise approved.
- (3) NEC ARTICLE 110-8 (SUPPLEMENTARY). Raceways as defined in Article 100, NEC, Or MI, ALS or CS Cable shall be the wiring method for buildings or other structures for commercial, industrial, institutional or public use. EXCEPTION #1: Class 2 or 3 systems installed in conformity with Article 725, NEC.
- (4) NEC ARTICLE 230-28 (SUPPLEMENTARY). A perpendicular mast used for the support of service drop conductors shall be not less than 1½ inch rigid conduit.
- ~~(5)--NEC-ARTICLE-230-72-(c)-and-NEC-ARTICLE-230-91-(MODI-
FICATION)--Service-disconnecting-means-and-over-current
devices-shall-be-located-within-two-(2)-feet-of-the-en-
trance-of-the-service-entrance-conductors-to-a-building-~~
- ~~(6)~~ (5) NEC ARTICLE 310-5 (MODIFICATION). No wires smaller than #12 AWG shall be used in wiring of 110 volts or over, except for remote control circuits.
- ~~(7)~~ (6) NEW ARTICLE 320-3 (MODIFICATION). Open wiring shall be permitted to be used only outdoors.
- ~~(8)~~ (7) NEW ARTICLE 336-3 (MODIFICATION). Nonmetallic-sheathed cable shall be permitted to be used only in resi-
dential dwellings up to and including twelve (12) units
and residential, farm and ranch garages, outbuildings or
other structures, when no portions of, or additions to
said structures are maintained or intended for commercial
use.

4. The Division is proposing this amendment to its rule

to editorially clarify the rules to match totally the present operations within the Electrical Safety Bureau as well as doing away with unnecessary verbage that has expired. The change is provided for in Section 50-60-203, MCA, which provides the Division with authority to adopt rules.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendments is based on Sections 50-60-203, and 50-60-603, MCA. The authority for implementation is provided in Sections 50-60-103, and 50-60-604, MCA.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING ON
of RULE ARM 2-2.11(1)-S1130	)	AMENDMENT OF RULE
concerning the adoption of	)	NFPA 501C, Standard for
NFPA 501C, Standard for Rec-	)	Recreational Vehicles
reational Vehicles)	

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building Auditorium, 111 Sanders, Helena, Montana to consider the amendment of Rule ARM 2-2.11(1)-S1130, titled "INCORPORATION BY REFERENCE OF NFPA 501C, STANDARD FOR RECREATIONAL VEHICLES".

2. The proposed amendment replaces present Rule 2-2.11(1)-S1130, found in the Administrative Rules of Montana. The proposed amendment adopts the 1977 Edition of NFPA 501C, Standard for Recreational Vehicles by Reference.

3. The rule as proposed to be amended reads as follows:
2-2.11(1)-S1130 INCORPORATION BY REFERENCE OF NFPA 501C, STANDARD FOR RECREATIONAL VEHICLES (1) The Building Codes Division of the Department of Administration adopts and incorporates by reference herein the NFPA 501C, Standards for Recreational Vehicles, ~~1974~~ 1977 Edition.

(2) The purpose of this Standard is to provide a uniform standard covering the installation of plumbing, heating, and electrical systems for travel trailers, camping trailers, truck campers, and motor homes.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of NFPA 501C, Standard For Recreational Vehicles. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Agency to make the proposed amendment is based on Sections 50-60-203 and 50-60-401, MCA. The authority for implementation is provided in Sections 50-60-103 and 50-60-402, MCA.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of amendment of) NOTICE OF PUBLIC HEARING ON
Rule ARM 2-2.11(1)-S1100 con-) AMENDMENT OF RULE
cerning the adoption of the) Uniform Building Code
Uniform Building Code by)
reference.

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of Rule ARM 2-2.11(1)-S1100, titled "INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE".

2. The proposed amendment replaces present Rule 2-2.11(1)-S1100 found in the Administrative Rules of Montana. The proposed amendment adopts the 1979 Edition of the Uniform Building Code by reference along with listed appendix chapters.

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

2-2.11(1)-S1100 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) The Building Codes Division of the Department of Administration adopts and incorporates by reference herein the Uniform Building Code, 1976 1979 Edition, together with the Appendix Chapter 23 (Weights and Building Materials), Appendix Chapter 48 (Photographic and X-Ray Films), Appendix Chapter 49 (Patio Covers), and Appendix Chapter 51 (Elevators, Dumbwaiters, Escalators, and Moving Walks), Appendix Chapter 53 (Energy Conservation in New Building Construction), and Appendix Chapter 55 (Membrane Structures), as amended, with the following amendments thereto:

(a) Any reference made to "city" or "municipality" will also be considered to be referenced to the "county" and "state".

(b) The annual certificates of inspection fees in Sec. 5108, p. 649 674 of Chapter 51 shall be as follows:

Fees When Inspections are Made By The Division

For each elevator, ~~-----~~ \$50

~~For each~~ escalator and

moving walk \$58

~~For each commercial~~

~~dumbwaiter-----\$25~~

Fees When Inspections Are Made By Certified Inspector

For each elevator, escalator

and moving walk \$25

Chapter 51 shall apply only to conveyances used by members of the general public in "public places", as defined in Section 50-60-101, Subsection (11), MCA.

(c) Add a new paragraph to Section 303 of the Uniform Building Code to read, "(e) Requested Inspection Fee - Thirty dollars (\$30) provided that such service is not in excess of one hour in duration, and then fifteen dollars (\$15) for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the State of Montana's existing rates for these items."

(d) Section 204 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by Section 50-60-303, MCA, must provide an appeal procedure. The Division and State of Montana, however, will use the applicable provisions of the Montana Administrative Procedures Act in all cases of appeal, in lieu of Section 204.

(e) Section 205 of the code will be left as is for use by local governments (i.e., municipalities and counties). The Division and the State of Montana will use Sections 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of Section 205. When a person fails to submit required plans, obtain a permit, correct plans, comply with an order of the Division, the Division, as authorized by Section 50-60-109, MCA, enjoin him from constructing or using the building.

(2) The purpose of this Code is to provide minimum standards to safeguard life or limb, health, property and the public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures and certain equipment specifically regulated therein.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Building Code. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA. The authority for implementation is provided in Sections 50-60-103, and 50-60-104, MCA.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of Rule ARM 2-2.11(6)-S11430) AMENDMENT OF RULE
concerning the adoption of) Uniform Mechanical Code
the Uniform Mechanical Code)
by reference.)

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m. a public hearing will be held in the Social and Rehabilitation Services Building Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of Rule ARM 2-2.11(6)-S11430, titled "INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE".

2. The proposed amendment replaces present Rule 2-2.11(6)-S11430, found in the Administrative Rules of Montana. The proposed amendment adopts the 1979 Edition of the Uniform Mechanical Code by reference.

3. The rule as proposed to be amended reads as follows:
2-2.11(6)-S11430 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) The Building Codes Division of the Department of Administration adopts and incorporates by reference herein the Uniform Mechanical Code, 1976 1979 Edition, as amended, with the following amendments thereto:
(a) Any reference made to "city" or "municipality" will also be considered to be reference to the "county" and "state".
(b) The fees contained in Section 304 shall be deleted and replaced with the following:
For the issuance of each permit.....\$ 5.00
For the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance, up to and including 100,000 Btu/h 8.00
For the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h..... 10.00
For the installation or relocation of each floor furnace, including vent 7.50
For the installation or relocation of each suspended heater, recessed wall heater or floor mounted unit heater 7.50
For the installation, relocation or replacement of each appliance vent installed and not included in an appliance permit 3.00
For the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption, or evaporative cooling system, including installation

of controls regulated by this Code.....	5.00
For the installation or relocation of each boiler or compressor to and including three horsepower, or each absorption system to and including 100,000 Btu/h.....	5.00
For the installation or relocation of each boiler or compressor over three horsepower to and including 15 horsepower, or each absorption system over 100,000 Btu/h and including 500,000 Btu/h.....	10.00
For the installation or relocation of each boiler or compressor over 15 horsepower to and including 30 horsepower, or each absorption system over 500,000 Btu/h to and including 1,000,000 Btu/h....	15.00
For the installation or relocation of each boiler or compressor over 30 horsepower to and including 50 horsepower, or for each absorption system over 1,000,000 Btu/h to and including 1,750,000 Btu/h...	20.00
For the installation or relocation of each boiler or refrigeration compressor over 50 horsepower, or each absorption system over 1,750,000 Btu/h.....	50.00
For each air handling unit to and including 10,000 cubic feet per minute, including ducts attached thereto	5.00
NOTE: This fee shall not apply to an air handling unit which is a portion of a factory assembled appliance, cooling unit, evaporative cooler or absorption unit for which a permit is required elsewhere in this Code.	
For each air handling unit over 10,000 cfm.....	10.00
For each evaporative cooler other than portable type.....	5.00
For each ventilation fan connected to a single duct	2.00
For each ventilation system which is not a portion of any heating or air conditioning system authorized by a permit	5.00
For the installation of each hood which is served by mechanical exhaust, including the ducts for such hood.....	5.00
For the installation or relocation of each domestic type incinerator	10.00
For the installation or relocation of each commercial or industrial type incinerator	35.00
For each appliance or piece of equipment regulated by this Code but not classed in other appliance categories, or for which no other fee is listed in this Code...	5.00
Requested Inspection Fee - Thirty dollars (\$30) provided that such service is not in excess of one hour in duration, and then fifteen dollars (\$15) for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's	

existing rates for these items.

(c) Section 203 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by Section 50-60-303, MCA, must provide an equal procedure. The Division and State of Montana, however, will use the applicable provisions of the Montana Administrative Procedures Act in all cases of appeal, in lieu of Section 203.

(d) Section 204 of the code will be left as is for use by local governments (e.e., municipalities and counties). The Division and State of Montana will use Sections 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of Section 204. When a person fails to submit required plans, obtain a permit, correct plans, comply with an order of the Division, the Division, will as authorized by Section 50-60-109, MCA, enjoin him from constructing or using the building.

(e) Chapter 21, Appendix B, page 271-288 titled "Steam and Hot-water Boilers, Steam and Hot-water Piping (Hydronics)" shall be adopted as part of the Uniform Mechanical Code.

(2) The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators and other miscellaneous heat-producing appliances.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Mechanical Code. In addition, fees must be such that costs of providing the service can be covered. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA. The authority for implementation is provided in Sections 50-60-103 and 50-60-104, MCA.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of Rule ARM 2-2.11(1)-S1110) AMENDMENT OF RULE
concerning the adoption of the) Uniform Housing Code
Uniform Housing Code by)
reference.)

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m. a public hearing will be held in the Social and Rehabilitation Services Building Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of Rule ARM 2-2.11(1)-S1110, titled "INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE".

2. The proposed amendment replaces present Rule 2-2.11(1)-S1110, found in the Administrative Rules of Montana. The proposed amendment adopts the 1979 Edition of the Uniform Housing Code by reference.

3. The rule as proposed to be amended reads as follows:
2-2.11(1)-S1110 INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE (1) The Building Codes Division of the Department of Administration adopts and incorporates by reference herein the Uniform Housing Code, 1976 1979 Edition, with the following amendment thereto:

(a) Any reference made to "city" or "municipality" will also be considered to be reference to the "county" and "state".

(b) Section 203 of the code will be left in as is for use by local governments (i.e., municipalities and counties), who by Section 50-60-303, MCA, must provide an appeal procedure. The Division and State of Montana, however, will use the applicable provisions of the Montana Administrative Procedures Act in all cases of appeal, in lieu of Section 203.

(c) Section 204 of the code will be left in as is for use by local governments (i.e., municipalities and counties). The Division and State of Montana will use Sections 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of Section 204. When a person fails to submit plans, obtain a permit, correct plans, comply with an order of the Division, the Division will apply Section 50-60-109, MCA, and thereby enjoin the person from constructing or using the building.

(2) The purpose of this Code is to provide minimum requirements for the protection of life, limb, health, property, safety, and welfare of the general public and the owners and occupants of residential buildings.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Housing

Code to correspond to the adoption of the 1979 Edition of the Uniform Building Code. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA. The authority for implementation is provided in Sections 50-60-103 and 50-60-104, MCA.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment } NOTICE OF PUBLIC HEARING ON
of Rule ARM 2-2.11(1)-S1120 } AMENDMENT OF RULE
concerning the adoption of the } Uniform Code for the Abate-
Uniform Code for the Abatement } ment of Dangerous Buildings
of Dangerous Buildings by }
reference. }

To: All Interested Persons:

1. On October 10, 1979 at 9:30 a.m. a public hearing will be held in the Social and Rehabilitation Services Building Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of Rule ARM 2-2.11(1)-S1120, titled "INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS".

2. The proposed amendment replaces present Rule 2-2.11(1)-S1120, found in the Administrative Rules of Montana. The proposed amendment adopts the 1979 Edition of the Uniform Code for the Abatement of Dangerous Buildings by reference.

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

2-2.11(1)-S1120 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS

(1) The Building Codes Division of the Department of Administration adopts and incorporates by reference herein the Uniform Code for the Abatement of Dangerous Buildings, 1976 1979 Edition, with the following amendments thereto:

(a) Any reference made to "city" or "municipality" will also be considered to be reference to the "county" and "state".

(b) Section 203 of the code will be left as is for use by local governments (i.e., municipalities and counties). The Division and State of Montana will use Sections 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of Section 203. When a person fails to submit plans, obtain a permit, correct plans, comply with an order of the Division, the Division will apply Section 50-60-109, MCA, and thereby enjoin the person from constructing or using the building.

(c) Section 205 of the code will be left in as is for use by local governments (i.e., municipalities and counties), who by Section 50-60-303, MCA, must provide an appeal procedure. The Division and State of Montana, however, will use the applicable provisions of the Montana Administrative Procedures act in all cases of appeal, in lieu of Section 205.


(2) The purpose of this Code is to provide a just, equitable, and practicable method, to be cumulative with and in addition to, any other remedy provided by the Uniform Building Code or Uniform Housing Code, or otherwise available at law, whereby buildings or structures which, from any cause, endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants, may be required to be repaired, vacated or demolished.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Code for the Abatement of Dangerous Buildings to correspond to the adoption of the 1979 Edition of the Uniform Building Code. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA. The authority for implementation is provided in Sections 50-60-103 and 50-60-104, MCA.


David M. Lewis, Director
Department of Administration

Certified to the Secretary of State September 4, 1979

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

IN THE MATTER of the Repeal of)	NOTICE OF PROPOSED REPEAL
ARM 40-3.6(1)-0600 through)	OF ARM 40-3.6(1)-0600
ARM 40-3.6(6)-S660 rules of the)	through ARM 40-3.6(6)-S660
Board of Abstracters)	RULES OF THE BOARD OF
	ABSTRACTERS

To: All Interested Persons:


1. On October 13, 1979, the Board of Abstracters will repeal the Board rules ARM 40-3.6(1)-0600 through ARM 40-3.6(6)-S660.

2. The Board is proposing to repeal its rules contained in Chapter 6, located at pages 40-53 through 40-56 in the Administrative Rules of Montana, in their entirety.

3. The rules are proposed for repeal as the Board was reviewed for sunset in 1978, as provided for in Title 2, Chapter 8 MCA. The 1979 Legislature did not re-establish the Board, therefore the rules will serve no purpose.

BOARD OF ABSTRACTERS
J. L. CADY, JR., CHAIRMAN

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 4, 1979.

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

IN THE MATTER of the Proposed	)	NOTICE OF PROPOSED AMEND-
Amendments of ARM 40-3.14(6)-	)	MENTS OF ARM 40-3.14(6)-
S1430 subsections (4), (5),	)	S1430 LICENSING REQUIRE-
(9), (11) concerning licensing	)	MENTS; ARM 40-3.14(10)-
requirements; ARM 40-3.14(10)-	)	S14010 REGULATION OF
S14010 subsections (2)(b),(4)	)	BOXING CONTESTANT; ARM 40-
(a) and (b), and (9)(b) concerning	)	3.14(18)-S14100
regulation of boxing contestants;	)	AUSTRALIAN TAG TEAM WREST-
and ARM 40-3.14(18)-S14100 sub-	)	LING
section (2)(b) concerning)	
Australian tag team wrestling.	)	NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons:

1. On October 13, 1979, the Board of Athletics proposes to amend rules ARM 40-3.14(6)-S1430 subsections (4), (5), (9) and (11) concerning licensing requirements; ARM 40-3.14(10)-S14010 subsections (2)(b), (4) (a) and (b) and (9)(b) concerning regulation of boxing contestants; and ARM 40-3.14(18)-S14100 subsection (2)(b) concerning Australian tag team wrestling.

2. The amendment to ARM 40-3.14(6)-S1430 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.14(6)-S1430 LICENSING REQUIREMENTS

(4) The Board of Athletics request that whenever any person ~~holding a boxing contestant license~~ is approached with a request or suggestion that a sham or collusive contest be entered into or that the contest shall not be conducted honestly and fairly, such licensed person must immediately report the matter to the Board of Athletics.

(5) The permit license issued by the Board shall be ~~enclosed in a suitable wood or metal frame in order that the whole of the said permit may be seen therein~~ and shall be posted up and at all times displayed in the box office of the premises where the ~~boxing~~ exhibitions are held.

.....(9) Any organization or person holding an annual license must obtain a separate permit or sanction from the Board before holding any specific boxing or wrestling contests. ~~No promoter will be permitted or licensed to operate at any one time more than one open arena; when the season permits; no more than one closed arena or building; either by being interested directly by leasing the property or by holding the lease and subleasing the property to another unless first having approval of the Board.~~ The Board must be notified of any proposed contests, together with the names and weights of all contestants at least ten (10) days before any such contest or exhibition.

.....~~(11) All gymnasiums, arenas, halls, buildings or~~

~~places where professional boxing, sparring or wrestling matches or exhibitions are held for prizes or purses or where an admission fee is charged or received must be licensed by the Board and comply with the bonding requirements of Section 23-3-207 MCA.~~"

3. The Board is proposing this amendment to remove obsolete language, clarify language and in general update the rules. This rule implements sections 23-3-201 and 207 MCA (82-303 R.C.M. 1947).

4. The proposed amendment to ARM 40-3.14(10)-S14010 sub-sections (2)(b), (4)(a) and (b) and (9)(b) will read as follows: (new matter underlined, deleted matter interlined)

"40-3.14(10)-S14010 REGULATION OF BOXING CONTESTANT

....(2)...(b) ~~No license will be granted to any~~
boxer over thirty-eight (38) years of age, will be
allowed to participate in any contest.

....(4) ~~Licensee~~

~~(a) -- Only contestants who have been duly licensed to box by the Board of Athletics will be allowed to participate in bouts sanctioned by the Board.~~

~~(b) --~~ Amateur boxers who desire to become professionals must serve notice of such intention in writing at the office of the AAU of the United States in whatever district they reside and at the office of the Board of Athletics governing professional boxing. ~~-A boxer at the expiration of ten (10) days after serving such notice, may apply for his professional license.~~

... (9) ... (b) ~~-- No boxer under 21 years of age shall take part in any contest of more than six rounds duration unless receiving the unanimous sanction of the Board. --~~"

5. The Board is also proposing this amendment to remove obsolete language, clarify and in general update the rule. The rule implements sections 23-3-201, 203, and 205 MCA (82-303, 305, and 307 R.C.M. 1947).

6. The proposed amendment to ARM 40-3.14(18)-S14100 sub-section (2)(b) will read as follows: (deleted matter interlined)

"40-3.14(18)-S14100 AUSTRALIAN TAG TEAM WRESTLING

....(2)...(b) If a wrestler is injured so that he cannot continue, his partner must carry on alone.
~~Time-out must be taken after the ring.~~ The opposing team must defeat the one wrestler once to win a team fall."

7. The amendment to this rule is proposed to remove unclear language. The rule implements section 23-3-201 MCA (82-303 R.C.M. 1947).

8. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Athletics, Lalonde Building, Helena, Montana 59601, no later than October 11, 1979.


9. If a person who is directly affected by the proposed amendments 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 Athletics, Lalonde Building, Helena, Montana 59601 no later than October 11, 1979.

10. If the Board receives requests for a public hearing on the proposed amendments from 10% or 25 or more of those persons directly affected by the proposed amendments or 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.

11. The authority of the Board to make the proposed amendments is based on section 23-3-102 MCA (82-301 R.C.M. 1947). The implementing sections are listed after each proposed rule change.

BOARD OF ATHLETICS
PATRICK J. CONNORS, CHAIRMAN

BY:


ED CARNET, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 4, 1979.

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED REPEAL
Repeal of ARM 40-3.18(6)-)	OF ARM 40-3.18(6)-S18010
S18010 concerning Sunday)	SUNDAY BARBERING AND ARM
Barbering and ARM 40-3.18(6)-)	40-3.18(6)-S18020 PRICE
S18020 concerning price)	AGREEMENTS
agreements)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 13, 1979 the Board of Barbers proposed to repeal ARM 40-3.18(6)-S18010 concerning Sunday barbering and ARM 40-3.18(6)-S18020 concerning price agreements.

2. The Board is proposing to repeal ARM 40-3.18(6)-S18010 Sunday Barbering and ARM 40-3.18(6)-S18020 Price Agreements in their entirety. Both rules are located at page 40-96 Administrative Rules of Montana.

3. The Board is proposing the repeal of the two rules in conformance with a letter from the Antitrust Enforcement Bureau of Montana dated June 6, 1979, in which they reviewed the rules and determined the above stated rules were in violation of the state and federal antitrust laws.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Board of Barbers, Lalonde Building, Helena, Montana 59601 no later than October 11, 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 Barbers, Lalonde Building, Helena, Montana 59601 no later than October 11, 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 or 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 of the Board to make the proposed repeal is based on section 37-30-203.(2) MCA (66-409 R.C.M. 1947) and implements section 37-30-203 MCA (66-409 R.C.M. 1947).

BOARD OF BARBERS
Lawrence Sandretto, President

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 4, 1979.

17-9/13/79

MAR Notice No. 40-18-6

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.26(6)-)	OF ARM 40-3.26(6)-S26000
S26000 subsection (1) con-)	RENEWALS
cerning renewals.)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 13, 1979, the Board of Chiropractors proposes to amend subsection (1) of ARM 40-3.26(6)-S26000 concerning renewals.

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

"40-3.26(6)-S26000 RENEWALS (1) The Chiropractic Act provides that every licensee pay annual renewal fee of \$25.00 ~~from \$5.00 to \$50.00~~. The fee is due on or before September 1st of each year. The licensee must present evidence, satisfactory to the Board that they have in the year preceding the application for renewal, attended at least ten (10) hours of education from an instructor with an accredited college. The Board may authorize issuance of a renewal, but not consecutive renewals, after showing satisfactorily to said Board that attendance at the educational programs was unavoidably prevented. Those licensees licensed by examination during the six (6) month preceding September 1st, shall be granted renewal without attending said education program. Failure for a licensee to comply with this rule will constitute reason for denial of license renewal."

3. The Board is proposing this amendment to set a specific fee, as the statutes allow the Board to set the fee. The Board has reviewed its costs of operation and determined the proposed fee to be adequate and necessary to cover those costs.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Chiropractors, Lalonde Building, Helena, Montana 59601 no later than October 11, 1979.

5. If a person who is directly affected by the proposed amendment 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 Chiropractors, Lalonde Building, Helena, Montana 59601 no later than October 11, 1979.

6. If the Board receives requests for a public hearing on the proposed amendment from 10% or 25 or more of those persons directly affected by the proposed amendment or 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 of the Board to make the proposed

-1064-

amendment is based on section 37-12-201 MCA (66-503 R.C.M. 1947) and implements section 37-12-307 MCA (55-512 R.C.M. 1947).

BOARD OF CHIROPRACTORS
JARL HOKLIN, CHAIRMAN

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 4, 1979.

17-9/13/79

MAR Notice No. 40-26-2

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF WARM AIR HEATING, VENTILATION AND
AIR CONDITIONING

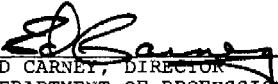
IN THE MATTER of the Repeal of ARM)	NOTICE OF PROPOSED REPEAL
40-3.104(1)-010400 through ARM)	OF ARM 40-3.104(1)-010400
40-3.104(6)-S10480 rules of the)	THROUGH ARM 40-3.104(6)-
Board of Warm Air Heating,)	S10480 RULES OF THE BOARD
Ventilation and Air Conditioning)	OF WARM AIR HEATING,
	VENTILATION AND AIR
	CONDITIONING

TO: All Interested Persons:

1. On October 13, 1979, the Board of Warm Air Heating, Ventilation and Air Conditioning will repeal the Board rules ARM 40-3.104(1)-010400 through ARM 40-3.104(6)-S10480.
2. The Board is proposing to repeal its rules contained in Chapter 104 located at pages 40-400.1 through 40-400.4 of the Administrative Rules of Montana in their entirety.
3. The rules are proposed for repeal as the Board was reviewed for sunset in 1978, as provided for in Title 2, Chapter 8 MCA. The 1979 Legislature did not re-establish the Board, therefore the rules will serve no purpose.

BOARD OF WARM AIR HEATING,
VENTILATION AND AIR CONDITIONING
ROBERT C. PATTERSON, MEMBER

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 4, 1979.

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

In the matter of the repeal of	)	NOTICE OF THE PROPOSED
rule 46-2.18(2)-S1830 pertaining	)	REPEAL OF RULE 46-2.18
to casefinding	)	(2)-S1830 PERTAINING TO
	)	CASEFINDING. NO
	)	PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On October 15, 1979, the agency proposes to repeal rule ARM 46-2.18(2)-S1830 (46.7.201) pertaining to casefinding.
2. The rule as proposed to be repealed can be found on page 46-137 of the Administrative Rules of Montana.
3. The agency proposes to repeal this rule as it is a duplication of 46-2.18(6)-S1850 (46.7.1701) COOPERATION WITH OTHER AGENCIES and therefore is repetitive and not necessary.
4. Interested persons may submit their data, views, or arguments concerning the proposed repeal to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than October 15, 1979.
5. The authority of the agency to make the proposed repeal is based on Section 53-7-302 MCA. The implementing authority for the proposed rule is based on Section 53-7-302 MCA.

Keith P. Celn
Director, Social and Rehabili-
tation Services

Certified to the Secretary of State September 4, 1979.

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

In the matter of the amendment	)	NOTICE OF PROPOSED
of Rule 46-2.10(14)-S11300	)	AMENDMENT OF RULE
pertaining to WIN Refusal	)	46-2.10(14)-S11300.
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On October 15, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(14)-S11300 which pertains to WIN refusal.

2. The Department proposes to amend Rule 46-2.10(14)-S11300 as follows:

46-2.10(14)-S11300 ~~REREGISTRATION AFTER WIN REFUSAL (WIN)~~
~~REAPPLICATION AFTER REFUSAL TO PARTICIPATE IN WIN (WIN)~~
(1) ~~Individuals who were deregistered on the basis~~
~~of a "without good cause" determination may upon application~~
~~again register for WIN, provided 90 days have elapsed since~~
~~their deregistration and they have given evidence to the~~
~~WIN project staff of willingness to participate.~~

(1) WIN non-exempt individuals who have been terminated
for refusal to participate in WIN without good cause may
reapply for AFDC after a sanction period, as determined by the
WIN Team, has elapsed. The sanction period shall be based on
the period the individual actually failed or refused to
participate in WIN without good cause.

(2) If the individual has been reaccepted into the
WIN program after termination without good cause, and is
subsequently terminated again for refusal to participate
without good cause, he must wait for a period of six months
and show willingness to participate before he can register
for WIN.

(2) Reacceptance into the WIN program may be denied by
the WIN Team where the termination action was a result of the
individual's disruptive behavior or of criminal or other
activities which presented a hazard to county welfare office
staff or WIN/ES staff or others.

(3) Reacceptance into the WIN program may be denied
where the termination action was a result of the individual's
disruptive behavior or of criminal or other activities which
presented a hazard to staff or others.

3. The proposed amendment is the result of a federal court order ruling fixed sanction periods invalid.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601 no later than October 11, 1979.

5. The authority of this agency to make the proposed amendment is based on Section 53-2-201 MCA. The implementing authority is based upon Section 53-4-212 MCA.

Keith J. Cello
Director, Social and Rehabili-
tation Services

Certified to the Secretary of State September 4, 1979.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the adoption)	NOTICE OF ADOPTION OF AMEND-
of Amendments to ARM 24-3.9(2))	MENTS TO RULE 24-3.9(2)-P9116,
-P9116, Rule 17 and Rule 25,)	Rule 17 and Rule 25, Dealing
Dealing with Pre-hearing)	with Pre-hearing Procedure
Procedure Before the Montana)	Before the Montana Human
Human Rights Commission and)	Rights Commission and the
with the Appeal of a Hearing)	Appeal of a Hearing Examiner's
Examiner's Proposed Order to)	Proposed Order to the Montana
the Montana Human Rights)	Human Rights Commission
Commission))

TO: All Interested Persons:

1. On July 12, 1979, the Human Rights Commission published notice of the proposed amendment of the above rule at pages 659 - 661 of the 1979 Montana Administrative Register, Issue Number 13.

2. The Commission has amended Rules 17 and 25 of the above-stated Rule as follows:

"Rule 17. Contested Cases, Informal Disposition, Pre-hearing Conference. In any contested case a formal proceeding may be waived pursuant to MCA 2-4-603. Section-02-4209-(4)-provides-for-informal-disposition of-any-contested-cases-where-not-precldued-by-law, by stipulation, agreed-statement, or-consent-order-(delete "or-default")."--For default, see Rule 16; see also Rules 24-3-9(2)-P9087 and 24-3-9(2)-P9077.

Parties may agree to the result.--To this end the Commission may hold one or more informal conferences on notice to all parties.--(Delete last sentence of this paragraph.)

In any contested case, an informal pre-hearing conference may be used to consider motions, define issues, determine witnesses, agree upon stipulations, or any other valid purpose reasonably intended to prepare a case for hearing. The Commission may appoint a hearing examiner for the purpose of conducting a pre-hearing conference or resolving any other pre-hearing matters. The Commission, or hearing examiner if one has been appointed, may require the parties to take part in a pre-hearing conference and/or to assist in preparing a Pre-hearing Order. The pre-hearing conference will be held when the Commission or hearing examiner decides, and may be held by phone. If a Pre-hearing Order is issued, it shall control the subsequent course of the action, unless modified to prevent manifest injustice.

Rule 25. Contested Cases, Proposed Orders. If a hearing examiner conducted the hearing and a majority of the Commission members have not read the record, a written proposed order, including findings of fact and

conclusions of law, shall be served upon each of the parties, or their attorneys, if they are represented by private counsel, and on the Division. ~~An opportunity to file exceptions, present briefs, and make oral arguments to the officials who are to render the decision shall be granted to all parties adversely affected and to the Division. --Section 62-4212.~~ If dissatisfied with the hearing examiner's proposal, a party or the Division may file exceptions within twenty (20) days of the date of the proposed order, or ten (10) days after the filing of exceptions by the other party or the Division, whichever period is longer.

If a party is the first to file exceptions to any of the hearing examiner's findings of fact, or conclusions of law as not having been based upon the evidence, that party shall at the time of filing said exceptions request a written transcript as provided by Rule 22, ARM 24-3.9 (2)-9116, or else indicate that such a written transcript shall be filed within forty (40) days after the date of the hearing examiner's proposed order, unless otherwise ordered by the Commission.

Briefs in support thereof may be filed with any exceptions; however, when exceptions include exceptions to findings of fact, a brief in support thereof need not be filed until twenty (20) days after the filing of the written transcript. Responsive briefs may be filed within ten (10) days after initial briefs, and reply briefs may be filed within ten (10) days after that.

For the purposes of this Rule, all filing shall be at the Commission's Office in Helena and shall be deemed complete when the original is either personally served or placed in the mail and copies are served or mailed to all adverse parties.

The Commission must give the opportunity for oral argument to all parties adversely affected and to the Division only when there is no written transcript made of the proceedings before the hearing examiner. If a majority of the Commission has read the record, then oral arguments will be heard only upon request of the Commission. MCA 2-4-621 (RCM 82-4212)."

Other than the above Amendments, the remainder of ARM 24-3.9 (2)-P9116 remains the same.

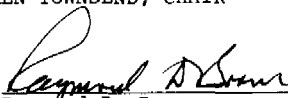
3. A public hearing on the amendment was held August 21, 1979, at 1:30 p.m. in room 300 of the Steamboat Block, Helena, Montana. No one appeared except members of the Commission and Commission staff. No written comments were received except a letter dated August 7, 1979 from the Administrative Code Committee. In that letter the Code Committee objected to the proposed amendment of Rule 17 that would have given authority to set a pre-hearing conference in a place other than in the county where the unlawful conduct is alleged to have occurred. The final form of the amendment was adopted by the Commission in order to satisfy this objection.

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Montana Administrative Register

4. The Commission has adopted the amendments in order to implement recent changes in MCA 2-4-601, 2-4-603, and 2-4-621, and to clearly define pre-hearing procedures before the Commission and procedures to be used before the Commission in order to make exceptions to a hearing examiner's proposed decision.

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR

By 
Raymond D. Brown
Administrator
Human Rights Division

Certified to the Secretary of State, August 30, 1979.

VOLUME NO. 38

OPINION NO. 36

STATE AGENCIES - Liability for county recording and copying fees;

COUNTIES - Authority of clerk and recorder to collect fees for recording and copying;

MONTANA CODES ANNOTATED - Sections 7-4-2516 (25-209, R.C.M. 1947), 7-4-2631 (25-231, R.C.M. 1947).

- HELD: 1. The Department of Natural Resources and Conservation must pay the fees set forth in section 7-4-2631, MCA for recording of water use permits.
2. County clerk and recorder may not collect a fee from the Department of Natural Resources and Conservation for the copying of documents on file with the county.

21 August 1979

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

Dear Mr. MacIntyre:

You have requested my opinion on the following questions:

1. May a county clerk and recorder collect a fee from the Department of Natural Resources and Conservation (hereinafter "the Department") for the recording of water use permits?
2. May a county clerk and recorder collect a fee from the Department for the copying of records on file?

In 37 OP. ATT'Y GEN. NO. 146 (1978), I held that the collection of these fees from the Department was prohibited by section 7-4-2516, MCA (25-209, R.C.M. 1947). Your inquiry deals with the impact on that ruling of the enactment of House Bill 490, Chapter 487, Laws of Montana (1979) (hereinafter "Chapter 487") by the 1979 legislature.

Chapter 487 amends section 7-4-2631, MCA, which deals with the fees charged by the county clerk for recording, filing, indexing, and copying documents. The amendment which pertains to your inquiry reads as follows:

(2) State agencies submitting documents for recording shall pay the recording fees provided for in this section. These fees may be paid on a monthly basis.

(Emphasis added.)

Section 7-4-2631 provides fees for the recording of virtually every document which by law may be recorded, including water use permits filed under the ground water code. Chapter 487 expressly subjects state agencies to the recording fees set forth in section 7-6-2431, legislatively overruling the contrary opinion in 37 OP. ATT'Y GEN. NO. 146 (1978).

You also inquire whether Chapter 487 requires the Department to pay the costs of copying documents on file with a county clerk and recorder. I conclude that it does not. The general rule regarding payment of fees by state agencies is set forth in section 7-4-2516, MCA (25-209, R.C.M. 1947):

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

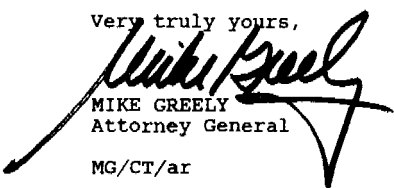
Chapter 487 amends this general rule by excepting from its operation those "recording fees" set forth in section 7-4-2631, MCA. As noted above, that section sets forth the fees collected by the county clerk, not only for recording, but also for filing, indexing, and copying of documents. The fact that the legislature specified "recording fees", rather than subjecting the state to payment of all fees set forth in that section, discloses a legislative intent to alter the general rules set forth in section 7-4-2516 as to recording fees only, and not as to copying fees.

THEREFORE, IT IS MY OPINION:

1. The Department of Natural Resources and Conservation must pay the fees set forth in section 7-4-2631, MCA for recording of water use permits.

2. A county clerk and recorder may not collect a fee from the Department of Natural Resources and Conservation for the copying of documents on file with the county.

Very truly yours,



MIKE GREELY
Attorney General

MG/CT/ar

VOLUME NO. 38

OPINION NO. 37

ELECTIONS - Initiatives; Local Government Procedures;
INITIATIVE PETITIONS - Local Government Procedures;
LOCAL GOVERNMENT - Initiative Petitions; Procedures; Pre-
Filing Requirement.

HELD: A petition for a municipal initiative, filed prior to July 1, 1979, cannot be considered valid unless it was pre-filed with the city clerk for approval as to form.

22 August 1979

Gerald Navratil, Esq.
City Attorney
P.O. Box 1307
Glendive, Montana 59330

Dear Mr. Navratil:

You asked my opinion concerning the following question:

May a petition for a municipal initiative which has not been submitted to the City Clerk for approval as to form be considered valid?

The petition in question was filed with the Glendive City Clerk on June 25, 1979. The law in effect at that time, section 7-5-4218, MCA, required petitions to be processed in the same manner required for petitions submitted at the state level.

7-5-4218. Form of petitions and conduct of proceedings. The form of petitions and proceedings under this part relating to initiative and referendum shall conform, as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum and shall be regulated by such laws except as otherwise provided in this part. The city clerk shall perform the duties which, under the state laws, devolve upon the county clerk and secretary of state insofar as the provisions relating thereto may be made to apply to the case of the city or town clerk. It shall not be necessary to mail or distribute copies of the petitions or measures to the electors of the city or town.

State laws relating to petition form and procedure are found in Title 13, Chapter 27, MCA. The requirement of state law in issue here is approval of a petition's form, which is set forth in section 13-27-202, MCA:

Before a petition may be circulated for signatures, a sample sheet must be submitted to the secretary of state in the form in which it will be circulated. The secretary of state shall refer a copy of the sheet to the attorney general for his approval. The secretary of state and attorney general must each review the sheet for sufficiency as to form and approve or reject the form of the petition stating his reasons therefor. The attorney general shall return the sheet together with his comments within 3 working days after receiving it. The secretary of state shall review the comments of the attorney general and make a final decision as to the approval or disapproval of the form of the sheet. The secretary of state must notify the person who submitted the sheet of the approval or rejection together with reasons for rejection, if applicable, within 1 week of receiving the sheet.

This pre-filing requirement has three purposes: (1) administrative convenience; (2) detection of flaws which could cause invalidity of the petition; and (3) fraud prevention. As applied at the local level, pre-filing aids the administrative process in that it notifies the local government of pending petitions and eases clerical handling. The local clerk or city attorney may detect errors in the form of the petition which could save the petitioner the trouble of going through a lengthy petition drive only to later find the petition is flawed. It may also protect the signer from being misled by an improper or possibly deceptive style. Finally, it protects against fraud by insuring that the petition signed is the same one submitted to the clerk.

An Oklahoma decision construing a statute substantially the same as section 13-27-202, MCA, [See 34 O.S. §§8, 51 (1941)] held that failure to submit a petition to the city clerk prior to circulation was fatal. In Re Referendum #1, City of Guymon, 167 P.2d 881 (Ok. 1946). The court noted that the major purpose of the statute was to prevent fraud and insure that the petition filed was identical with the one pre-filed. The court rejected the argument that the sole purpose of pre-filing statutes is to fix the time within which the petition must be filed, and held that the power to require pre-filing of a copy was within the power of the legislature.

It is noteworthy that the petition in question here contains a substantial flaw. The petition calls for a special election within three weeks following council action on the proposed ordinance. Section 7-5-4221, MCA, however, requires four weeks prior notice of the election. Had the petition been submitted before circulation, such an error could have been detected in the city attorney's review. Petition proponents could then have remedied the error and a legally sufficient petition could have been prepared.

The petition should have been submitted to the city clerk for pre-circulation review of its form as required pursuant to sections 7-5-4218 and 13-27-202, MCA. In my opinion the failure to submit the petition prior to circulation invalidates the petition.

In its last session the legislature passed a major bill which substantially changed many of the state election laws, (SB 65, enacted as Laws of Montana 1979, Chapter 571). The legislature repealed the local procedural requirements embodied in sections 7-5-4211 through 7-5-4225, MCA and amended section 7-5-132 as follows:

"7-5-132. Procedure to exercise right of initiative or referendum. (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;
(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, Chapter 27, except as specifically provided in this part; and
(d) contain the signatures of 15% of the registered electors of the local government."

[Amended portion emphasized].

All local petitions filed after July 1, 1979 are not required to be submitted to the clerk prior to circulation but still must be in the form prescribed by section 13-27-201 and 13-27-204. The other major change is that the amount of time between determination of the petition and the special election is now 60 days.

"7-5-136. Submission of question to electors. (1) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(b) the governing body calls for a special election on the question.

(2) A special election may not be held sooner than 60 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

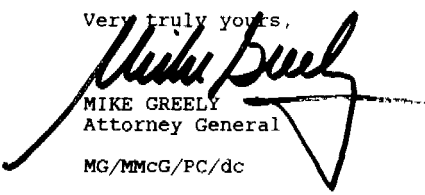
(5) The question shall be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal." Laws of Montana 1979, Chapter 571, Section 300.

[Amended portion emphasized].

The provisions in Part 1, Chapter 5, Title 7, MCA, now control the procedure to be followed at the local level. Please be advised of these statutory changes so that your policies can be altered accordingly.

Very truly yours,



MIKE GREELY
Attorney General

MG/MMCG/PC/dc

VOLUME NO. 38

OPINION NO. 38

SCHOOLS - Postsecondary vocational education programs, CETA funds, control of funding;
VOCATIONAL EDUCATION - CETA funds, control of postsecondary vocational education funding;
MONTANA CODE ANNOTATED - Sections 20-3-106 (75-5707, R.C.M. 1947); 20-7-322 (75-7706, R.C.M. 1947) and 20-7-324 (75-7709, R.C.M. 1947).

HELD: Federal CETA funds that are designed to establish training programs in postsecondary vocational technical centers must be provided through the Superintendent of Public Instruction.

30 August 1979

Georgia Ruth Rice
Superintendent of Public Instruction
State Capitol
Helena, Montana 59601

Dear Mrs. Rice:

You have requested my opinion to the following question:

May federal CETA funds be lawfully provided to school districts for vocational education programs through the State Department of Labor and Industry rather than through the Board of Public Education and the Office of Public Instruction?

The State of Montana participates in and receives substantial federal funding through the Comprehensive Employment and Training Act (CETA), 29 U.S.C.A. Section 801 et seq. This program is designed to "provide job training and employment opportunities for economically disadvantaged, unemployed, or underemployed persons...." 29 U.S.C.A. §801. CETA funds and programs are the responsibility of the Governor as prime sponsor and his Employment and Training Council. See 29 U.S.C.A. § 820. The money the prime sponsor receives in Montana has been subgranted at least in part to the Board of Public Education, for use in vocational education programs. Due to an apparent dispute between the Council and the Superintendent of Public Instruction (acting as executive agent of the Board), this subgrant has been cancelled and these CETA vocational education monies have

been re-subgranted to the Employment Security Division of the Montana Department of Labor and Industry. Under either arrangement, however, at least part of the funds in question ultimately end up in local postsecondary vocational technical center programs.

The instant dispute, then, involves which subgranting procedure is required by law. It should be cautioned that no other use of CETA FUNDS, such as funding for persons who apply for admission to programs on an individual basis, has been raised as an issue, and no other use of CETA funds is intended to be affected by this opinion. The reach is solely as to funds used for postsecondary vocational technical education programs, since CETA funds are apparently used for a variety of other purposes and programs.

Nothing has been found in CETA itself which would answer the issue raised herein. While the prime sponsor is ultimately responsible for the program in the State, 29 U.S.C.A. Section 813, which must be coordinated with existing programs, including postsecondary vocational technical education, 29 U.S.C.A. Section 815(b), nothing in the federal law actually governs whether one state agency or another will act as the "funnel" of federal funds to local programs.

Montana law, however, is much more specific. The Superintendent of Public Instruction is the "governing agent and executive officer" for vocational education. Section 20-3-106(28), MCA. Section 20-7-324, MCA, vests almost total control over postsecondary vocational technical centers in the SPI. Subsection (1)(c) thereof provides:

Designated postsecondary vocational technical centers shall be eligible to receive such funds from the federal government as the superintendent of public instruction may provide pursuant to applicable acts of congress.

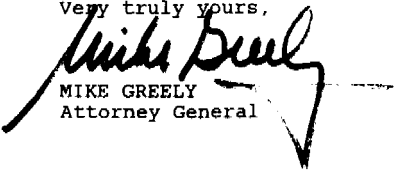
Subsection (2) empowers the SPI to "direct the distribution" of these federal funds on the basis of postsecondary vocational technical center budgets also approved by the SPI. All money "designated, appropriated, or apportioned" from federal sources for the "establishment, operation or furtherance of vocational education" must be deposited with the state treasurer to be disbursed "at the direction of" the SPI. Section 20-7-322, MCA. This section primarily relates to funds provided for vocational education under 29 U.S.C.A. §842. The SPI has "sole authority" to approve all postsecondary vocational technical center budgets.

It is clear from the provisions cited above that the legislature has intended to place all matters relating to the financing of postsecondary vocational technical education under the supervision of the SPI. This would include the distribution of CETA money designed to be spent on postsecondary vocational technical education.

THEREFORE, IT IS MY OPINION:

Federal CETA funds that are designed to establish training programs in postsecondary vocational technical centers must be provided through the Superintendent of Public Instruction.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38

OPINION NO. 39

COUNTIES - Responsibility for installation of culverts in municipalities;
COUNTY COMMISSIONERS - Duty to install culverts in municipalities;
HIGHWAYS - City streets crossing irrigation ditches;
IRRIGATION - Ditches, duty to build bridges where streets cross;
MUNICIPAL CORPORATIONS - Construction of bridges or culverts within limits;
WATER AND WATERWAYS - Natural streams within municipalities, duty to build bridges over;
MONTANA CODE ANNOTATED - Sections 1-1-108, 7-14-2101(2)(b), 7-14-2201(4), 7-14-2204(1), 7-14-2502(3).

HELD: When a city street is dedicated and opened to public use after the construction of an irrigation ditch that crosses the street, it is the duty of the county commissioners, pursuant to section 7-14-2204(1), MCA, to build and maintain any bridge or culvert necessary to the opening of the street over the ditch.

31 August 1979

Patrick F. Flaherty, Esq.
Jefferson County Attorney
Boulder, Montana 59632

Allen Lemieux, Esq.
City of Boulder
Boulder, Montana 59632

Gentlemen:

You have requested my opinion on the following question:

When a city street is dedicated and opened to public use after the construction of an irrigation ditch that crosses the street, are the county commissioners responsible for building bridges or culverts necessary to the opening of the street over the ditch?

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Section 7-14-2204(1), MCA, provides:

Each board of county commissioners shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

The statute goes on to require the city or town to share in the costs of paving or planking the bridges constructed by the county within the municipal limits.

The first question raised by your inquiry is whether the county's duty to build bridges under section 7-14-2204(1) includes the duty to install culverts. The general statutory provision concerning bridges does not specifically answer this question. Section 7-14-2101(2)(b), MCA, merely states that the term "bridge" includes "rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills." The more explicit statute on the power of a county to levy special taxes for bridge construction, however, amplifies the general definition of bridges to encompass culverts by allowing the collection of taxes for the building and maintenance of "any drainage structure located on, over, or through any road or highway." §7-14-2502(3), MCA. Although section 7-14-2204(1) does not contain this specific definition, it is logical to interpret the statutory scheme on the county's duty to build bridges and its authority to collect taxes for that purpose as pertaining to the same types of structures, whether they are constructed inside or outside the limits of a city or town. See §7-14-2201(4), MCA (as amended by Laws of Mont. (1979), ch. 194). It is therefore my opinion that the duty to build bridges imposed by section 7-14-2204(1) includes the duty to install culverts when such devices are deemed most appropriate for conveying water beneath a public street or highway.

A further question presented by your inquiry is whether an irrigation ditch may be considered a "natural stream" under section 7-14-2204(1). The answer to this question depends on the circumstances surrounding the original establishment of the street or road and the construction of the intersecting ditch.

According to the common law rule, when a public entity dedicates and opens a thoroughfare that crosses a pre-existing ditch or canal, the public entity is responsible

for building any necessary bridges or culverts. City of Indianapolis v. Indianapolis Water Co., 185 Ind. 277, 113 N.E. 369, 375 (1916); see State ex rel. City of Livingston v. State Water Conservation Bd., 134 Mont. 403, 414, 332 P.2d 913, 920 (1958). A corollary to this common law rule is that irrigation ditches and canals that predate public roads with which they intersect are considered natural streams as to those roads even though they may have been artificially constructed in the first instance. City of Indianapolis, 113 N.E. at 375; City of Oswego v. Oswego Canal Co., 6 N.Y. 257, 266 (1852).

Section 1-1-108, MCA, provides that the common law is the controlling law in Montana unless it is superseded by or in conflict with a statute on the same subject. Section 7-14-2204(1), which allocates the responsibility for building bridges in cities and towns, does not define the scope of the term "natural stream" as used therein. Therefore, the common law on the subject must be used to supply the definition of the term in applying the statute to the factual situation presented here. As stated earlier, an irrigation ditch established prior to the existence of a public street that intersects the ditch is deemed a natural stream as to that street under common law. Consequently, such a ditch must also be considered a natural stream within the meaning of section 7-14-2204(1), MCA.

THEREFORE, IT IS MY OPINION:

When a city street is dedicated and opened to public use after the construction of an irrigation ditch that crosses the street, it is the duty of the county commissioners, pursuant to section 7-14-2204(1), MCA, to build and maintain any bridge or culvert necessary to the opening of the street over the ditch.

Very truly yours,



MIKE GREELEY
Attorney General

MG/MBT/ar