RESERVE

MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 21
PAGES 1310-1453

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. 21

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

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TO: All Interested Persons

1. On December 17, 1979, the Department of Health and Environmental Sciences has proposed to repeal rule 16-2.14(2)-S14130 regulating dance halls and pleasure resorts.

2. The rule for consideration for repeal is found on page 16-92 of the Administrative Rules of Montana.

3. The department proposes to repeal this rule because the Department of Administration has adopted a rule of similar import for toilet facilities in new buildings, including assembly buildings, ARM 2-2.11(1)-S11060 (Notice of Adoption, p. 1483, MAR 1978 Issue No. 14), which the department believes covers the subject matter of ARM 16-2.14(2)-S14130. Therefore, the proposed repeal would eliminate a superfluous rule.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Robert L. Solomon, Presiding Officer, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than December 14, 1979.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Solomon on or before December 14, 1979.

6. If the department receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed repeal of the rule, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notification of parties in such event will be made by publication in the Administrative Register.

7. The authority of the department to repeal this rule is based on Sections 2-4-305, 2-4-314, MCA.

A. C. KNIGHT, Director

BY JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State November 6, 1979

21-11/15/79

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

In the matter of the repeal of rule 16-2.14(2)-S14250 regulating rummage and second-hand clothing	))))	NOTICE OF PROPOSED REPEAL OF RULE 16-2.14(2)-S14250 (Rummage and Second-Hand Clothing) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 17, 1979, the Department of Health and Environmental Sciences has proposed to repeal rule 16-2.14(2)-S14250 regulating rummage and second-hand clothing.

2. The rule for consideration for repeal is found on pages 16-201 and 16-202 of the Administrative Rules of Montana.

3. The department proposes to repeal this rule because the statute cited for the rule no longer authorizes the rule.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Robert L. Solomon, Presiding Officer, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than December 14, 1979.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Solomon on or before December 14, 1979.

6. If the department receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed repeal of the rule, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notification of parties in such event will be made by publication in the Administrative Register.

7. The authority of the department to repeal this rule is based on Sections 2-4-305, 2-4-314, MCA.

A. C. KNIGHT, Director

BY JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State November 6, 1979

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

In the matter of the repeal of rule 16-2.14(2)-S14240 regarding nuisances	)))	NOTICE OF PROPOSED REPEAL OF RULE 16-2.14(2)-S14240 (Nuisances) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 17, 1979, the Department of Health and Environmental Sciences has proposed to repeal rule 16-2.14(2)-S14240 regarding nuisances.

2. The rule for consideration for repeal is found on pages 16-200 and 16-201 of the Administrative Rules of Montana.

3. The department proposes to repeal this rule because the statute cited does not authorize the rule.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Robert L. Solomon, Presiding Officer, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than December 14, 1979.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Solomon on or before December 14, 1979.

6. If the department receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed repeal of the rule, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notification of parties in such event will be made by publication in the Administrative Register.

7. The authority of the department to repeal this rule is based on Sections 2-4-305, 2-4-314, MCA.

A. C. KNIGHT, Director

BY John W. Bartlett
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State November 6, 1979

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rule 18-2.10(10)-S10090 regarding lease policies and Rule 18-2.10(10)-S10100 regarding instructions and identification, these policies are now incorporated into Rule 18-2.10(10)-S10080.	NOTICE OF PROPOSED REPEAL OF RULE 18-2.10 (10)-S10090, POLICIES OF UNIFORM AGREEMENT RELATING TO LEASED VEHICLES AND RULE 18-2 .10(10)-S10100, INSTRUCTIONS, FEES, AND IDENTIFICATION. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 28, 1979, the Department of Highways proposes to repeal Rule 18-2.10(10)-S10090 regarding policies relating to leased vehicles licensing under the Uniform Agreement and Rule 18-2.10(10)-S10100 regarding instructions, fees, and indentification for licensing under the Uniform Agreement.

2. The rules proposed to be repealed are on pages 18-132 through 18-134 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules because the information is being incorporated into amended Rule 18-2.10 (10)-S10080.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than December 13, 1979.

5. If a person who is directly affected by the proposed repeal of Rules 18-2.10(10)-S10090 and 18-2.10(10)-S10100 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Ronald P. Richards, Director, Department of Highways, 2701 Prospect, Helena, Montana 59601, no later than December 13, 1979.

6. If the Agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less of the persons directly affected; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 776 persons based on the number of prorated carriers in Montana through September 1979.

7. The authority of the agency to make the proposed rule is based on section 61-3-713 and implemented by 61-3-711 through 61-3-733, MCA.

IN THE MATTER OF THE AMENDMENT of Rule 18-2.10(10)-S10080 regarding licensing under Uniform Agreement.	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 18-2.10(10)-S10080, UNIFORM AGREEMENT PRORATE INSTRUCTIONS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 28, 1979, the Department of Highways proposes to amend Rule 18-2.10(10)-S10080 which is an out-of-date copy of the Uniform Agreement.

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

18-2.10(10)-S10080 ~~UNIFORM AGREEMENT PRORATE INSTRUCTIONS~~ INTERSTATE APPORTIONED LICENSING (1) Apportioned or proportional registration is a method of licensing commercial vehicles travelling interstate in which the fees are prorated by the percentage of miles travelled in each jurisdiction.

(2) The State of Montana is a member of two major apportioned licensing agreements. These agreements are known as the International Registration Plan and the Uniform Vehicle Registration Proration and Reciprocity Agreement.

(3) In addition to Montana, the following jurisdictions are members of the International Registration Plan: Alabama (Effective October 1, 1980), Alberta, Arkansas, Colorado, Idaho, Illinois, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming. Carriers from these jurisdictions receive instructions, submit applications, and receive identification through their base (home) jurisdiction, which allows their travel in other jurisdictions.

(4) Members of the Uniform Vehicle Registration Proration and Reciprocity Agreement are: Montana, Alaska, Arizona, British Columbia, California, Kansas, Nevada, New Mexico, North Dakota, and Washington. Carriers from these jurisdictions submit an application and receive identification from each jurisdiction in which they wish to travel.

(5) Montana based carriers and carriers from the Uniform Agreement jurisdictions are to contact the Gross Vehicle Weight Division, Box 4639, Helena, Montana 59601, A.C. 406-449-2476, (2701 Prospect Avenue), for complete instructions and application forms. Carriers in the International Registration Plan are to contact their base (home) jurisdiction for instructions.

The rule material which is being deleted is contained on ARM pages 18-125 through 18-132. It is a copy of the out-of-date Uniform Vehicle Registration Proration and Reciprocity instructions, which were in effect in 1972. Since this material is so lengthy, it is not being submitted in this notice.

A copy of the entire material being removed can be obtained by contacting the Gross Vehicle Weight Division, Box 4639, Helena, Montana 59601. The new amended material added to this rule better explains the methods of apportioned (proportional) licensing and procedures to be followed.

3. This rule is proposed to be amended to make current the information on the methods of interstate apportional licensing available to Montana carriers. This rule had not been revised since its adoption on December 29, 1972.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than December 13, 1979.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than December 13, 1979.

6. If the Agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less of the persons directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 776 persons based on the number of prorated carriers in Montana through September 1979.

7. The authority of the department to make the proposed amendment is based on section 61-3-713 and implemented by 61-3-711 through 61-3-733, MCA.

By: Ronald P. Richards
Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of State, November 6, 1979.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rule 18-2.6A(1)-S600, Rules Administered by Right of Way Section.	NOTICE OF PROPOSED REPEAL of Rule 18-2.6A-S600 relating to Rules Administered by Right of Way Section. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 1, 1980, the Department of Highways proposes to repeal 18-2.6A(1)-S600, relating to Rules Administered by the Right of Way Section.

2. The rule proposed to be repealed is on page 18-17, of the Administrative Rules of Montana.

3. The department proposes to repeal this rule for the following reason:

Rule 18-2.6A(1)-S600 is obsolete because the rules under the jurisdiction of the Preconstruction Bureau are no longer administered by the Right of Way Section. These rules are administered by the Preconstruction Bureau and are included in recodified Chapter 5 of Title 18.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to the Director of Highways, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than December 13, 1979.

5. If a person who is directly affected by the proposed repeal of Rule 18-2.6A(1)-S600 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has, to Ronald P. Richards, at the address given in paragraph 4 above, no later than December 13, 1979.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons directly affected; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 6,000 persons based on the estimated number of property ownerships abutting non-controlled access highways on the State Highway System.

7. The authority of the department to make the proposed rule is based on Section 2-5-112, MCA; implemented by Section 2-5-112, MCA.

RONALD P. RICHARDS, Director,
Department of Highways

Certified to the Secretary of State November 6, 1979.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of rule 18-2.6AI(2)-S6040) relating to Encroachments on Controlled Access Right of Way)	NOTICE OF PROPOSED AMENDMENT OF RULE 18-2.6AI(2)-S6040, ENCROACHMENTS ON CONTROLLED ACCESS RIGHT OF WAY. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 28, 1979, the Department of Highways proposes to amend rule 18-2.6AI(2)-S6040, relating to encroachments on Controlled Access Right of Way.

2. The rule as proposed to be amended provides as follows: (stricken language interlined and added language underlined)

18-2.6AI(2)-S6040 ENCROACHMENTS ON CONTROLLED ACCESS RIGHT OF WAY (1) No private use of state highway system right-of-way shall be allowed within and between the access control limits of controlled access highway except as noted below:

(a) The Director of Highways or his assign may approve individual private encroachments within the controlled access right-of-way, provided prior concurrence is obtained from the Federal Highway Administration for each such encroachment.

(b) As a minimum requirement, encroachments within controlled access right-of-way must conform to the standards set forth in MAC ~~18-2.6AI(2)-S6059~~ 18-2.6AI(2)-S6080 through 18-2.6AI(2)-S6120.

(c) The facility must be constructed and maintained and be capable of being removed from the area outside of the access control limits.

3. The rule is proposed to be amended to correspond with location of the rule which set the standards for minimum requirements on encroachments on controlled access highways on the state highway system.

4. Interested parties may submit their data, views, or arguments, concerning the proposed amendment in writing to the Director of Highways, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than December 13, 1979.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ronald P. Richards, at the address given in paragraph 4 above, no later than December 13, 1979.

6. If the agency receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed

amendment, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 720 persons based on the estimated number of property ownerships abutting controlled access highways on the state highway system.

7. The authority of the agency to make the proposed amendment is based on Section 60-3-101, MCA.

RONALD P. RICHARDS, Director,
Department of Highways

Certified to the Secretary of State November 6, 1979.

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

IN THE MATTER of the Proposed Amendment of ARM 40-3.14(10)-S14030 subsection (1) concerning Weights and Classes

NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.14(10)-S14030 (1) WEIGHTS AND CLASSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 16, 1979 the Board of Athletics proposes to amend ARM 40-3.14(10)-S14030 subsection (1) concerning weights and classes.

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

"40-3.14(10)-S14030 WEIGHTS AND CLASSES (1) The following limitations or weights are placed on all boxing bouts:

Between Junior Flyweights.....(109 lbs.), ~~3~~ 1 lbs.
Between Flyweights.....(112 lbs.), ~~3~~ 1 lbs.
Between Junior Bantamweights.....(115 lbs.), ~~3~~ 1 lbs.
Between Bantamweights.....(118 lbs.), ~~3~~ 1 lbs.
Between Junior Featherweights.....(122 lbs.), ~~3~~ 1 lbs.
Between Featherweights.....(126 lbs.), ~~3~~ 1 lbs.
Between Junior Lightweights.....(130 lbs.), ~~3~~ 1 lbs.
Between Lightweights.....(135 lbs.), ~~3~~ 1 lbs.
Between Junior Welterweights.....(140 lbs.), ~~3~~ 1 lbs.
Between Welterweights.....(147 lbs.), ~~3~~ 1 lbs.
Between Middleweights.....(160 lbs.), ~~3~~ 1 lbs.
Between Light Heavyweights.....(175 lbs.), ~~3~~ 1 lbs.
Between Cruiser Weights.....(175-190 lbs.), ~~3~~ 1 lbs.
Heavyweights, all over 175 lbs..(no limitation)

Only ~~3~~ 1 lbs. overweight will be allowed from Junior Flyweights to Light Heavyweights and including cruiser weights,

Heavyweights - no limitations.

~~*For example, a flyweight weighing 110 lbs., could not box an opponent weighing over 113, if he weighed 112 lbs., his opponent could not exceed 115, etc.~~

(2)..... "

3. The Board is proposing the amendment to conform with international boxing regulations.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Athletics, Lalonde Building, Helena, Montana 59601 no later than December 14, 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 Athletics, Lalonde Building, Helena, Montana 59601 no later than December 14, 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 amendment is based on Section 23-3-102 MCA and implements section 23-3-103 MCA.

BOARD OF ATHLETICS
PATRICK J. CONNORS, CHAIRMAN

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

Certified to the Secretary of State, November 6, 1979.

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

IN THE MATTER of the Proposed) Adoption of new rules setting) fee schedules for dentists) and dental hygienists)	NOTICE OF PROPOSED ADOPTION OF ARM 40-3.34(6)-S3455 FEE SCHEDULE AND ARM 40-3.34(6)-S34010 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 16, 1979, the Board of Dentistry proposes to adopt two new rules setting fee schedules for dentists and dental hygienists.

2. The proposed rule ARM 40-3.34(6)-S3455 sets a fee schedule for dentists and will read as follows:

"40-3.34(6)-S3455 FEE SCHEDULE

(1)	Examination or application fee	$60.00
(2)	Re-examination or application	60.00
(3)	Licensure	20.00
(4)	Renewal, in-state	25.00
(5)	Renewal, out-of-state	25.00
(6)	Duplicate Licensure fee as set by section 37-4-303 MCA	10.00
(7)	Penalty fee as set by section 37-4-307(3) MCA	10.00"

3. The Board is proposing the adoption of this rule as the Board has the authority to set fees commensurate with costs and has determined this schedule, which includes several fees that are set by statute to be necessary to sustain the administrative costs of the Board. House Bill 233 which gave the Board discretion in setting the fees also required a statement of intent in which it required the Board of Dentistry to publish data on the actual costs of examination in notice of proposed rules. Listed below are the actual figures involved in the procedure for examination for both dentists and dental hygienists:

Actual cost: Department cost per applicant or examinee

four hours secretarial time	$23.00
law and rules - one copy	1.10
meeting room	2.00
three reference letters, return postage included	1.56
two verification letters, return postage included	1.04
five page exam (copying)	.25
application - postage	.47
Misc. costs	.88
Subtotal	30.30
Board time & Cost per applicant	27.00
TOTAL PER APPLICANT	57.30

The proposed rule implements sections 37-4-301 (4)(e), (f), (7), 303(2), 307 (1), (2), and (3) MCA.

4. The proposed rule ARM 40-3.34(6)-S34010 sets a fee

schedule for dental hygienists and will read as follows:

"40-3.34(6)-S34010 FEE SCHEDULE

(1)	Examination or application fee	$60.00
(2)	Re-examination or application	60.00
(3)	Renewal, in-state	10.00
(4)	Renewal, out-of-state	10.00
(5)	Licensure fee as set by section 37-4-403 MCA	15.00
(6)	Duplicate license fee as set by section 37-4-303 (2) MCA	10.00
(7)	Penalty fee	10.00"

5. The Board is proposing the adoption of this rule for the reasons as set out in paragraph 3. above.

The proposed rule implements sections 37-4-303(2), 402 (5) (e), (f), (7) and 406 (1) MCA.

6. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Dentistry, Lalonde Building, Helena, Montana 59601, no later than December 14, 1979.

7. If a person who is directly affected by the proposed adoptions 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 Dentistry, Lalonde Building, Helena, Montana 59601 no later than December 14, 1979.

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

9. The authority of the Board to make the proposed adoptions is based on the sections listed as implementing sections after each proposed rule.

BOARD OF DENTISTRY
DOUGLAS E. WOOD, D.D.S.,
PRESIDENT

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

Certified to the Secretary of State, NOvember 6, 1979.

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

IN THE MATTER of the Proposed) NOTICE OF PROPOSED REPEAL
Repeal of ARM 40-3.42(6)-S4260) OF ARM 40-3.42(6)-S4260
concerning a grandfather clause) GRANDFATHER CLAUSE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 16, 1979, the Board of Hearing Aid Dispensers proposing to repeal ARM 40-3.42(6)-S4260 concerning a grandfather clause.

2. The rule which is proposed for repeal is located at page 40-156.2 Administrative Rules of Montana and reads as follows: (deleted matter interlined)

~~"40-3.42(6)-S4260-GRANDFATHER-CLAUSE--(1)--The-"Grandfather-Clause"-provision-of-the-law-is-no-longer-valid-after-March-4,-1971.--Any-applicant-after-this-date-will be-required-to-take-the-Hearing-Aid-Board-examination and-pass-it-prior-to-licensing."~~

3. The Board is proposing the repeal as the rule is obsolete and was not recodified when the remainder of the rules were. The statute which this rule originally implemented was repealed in 1974 by Section 363, Chapter 350, Laws of 1974.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Board of Hearing Aid Dispensers, Lalonde Building, Helena, Montana 59601 no later than December 14, 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 Hearing Aid Dispensers, Lalonde Building, Helena, Montana 59601 no later than December 14, 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 the hearing will be published in the Montana Administrative Register.

7. The authority of the Board to make the proposed repeal is based on section 37-16-201 (5) MCA.

BOARD OF HEARING AID DISPENSERS
CECILIA SWEENEY, PRESIDENT

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

Certified to the Secretary of State, November 6, 1979.

MAR NOTICE NO. 40-42-9 21-11/15/79

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

IN THE MATTER of the Proposed Amendments of ARM 40-3.86(6)-S8630 concerning quorums; 40-3.86(6)-S8660 concerning approval of schools; 40-3.86(6)-S8680 concerning affiliation with National Associations; 40-3.86(6)-S8690 concerning a code of ethics; 40-3.86(6)-S86010 concerning preparation and publication of rosters, notices and orders, subsections (1) and (2); 40-3.86(6)-S86020, subsections (2)(b) and (7) concerning applications; 40-3.86(6)-S86030 subsections (3)(d), (e),(i),and (j)) concerning the granting and issuing of licenses; 40-3.86(6)-S86040 concerning preparation of licenses; 40-3.86(6)-S86050 concerning examinations; 40-3.86(6)-S86060 concerning renewals; 40-3.86(6)-S86070 subsections (3)(a) and (5)(e) concerning reciprocity for professional engineers; 40-3.86(6)-S86080 concerning duplicate or lost licenses; 40-3.86(6)-S86090 concerning a fee schedule; 40-3.86(6)-S86100 concerning suspensions and revocations; and 40-3.86(6)-S86105 subsection (4)) concerning corporate or multi-person firms.	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.86(6)-S8630 QUORUMS; 40-3.86(6)-S8660 APPROVAL OF SCHOOLS; 40-3.86(6)-S8680 AFFILIATION WITH NATIONAL ASSOCIATIONS; 40-3.86(6)-S8690 CODE OF ETHICS; 40-3.86(6)-S86010 PREPARATION AND PUBLICATION OF ROSTERS, NOTICES AND ORDERS; 40-3.86(6)-S86020 APPLICATIONS; 40-3.86(6)-S86030 GRANT AND ISSUE LICENSES; 40-3.86(6)-S86040 PREPARATION OF LICENSES, 40-3.86(6)-S86050 EXAMINATIONS; 40-3.86(6)-S86060 EXPIRATION - RENEWALS - FEES; 40-3.86(6)-S86070 RECIPROCITY FOR PROFESSIONAL ENGINEERS; 40-3.86(6)-S86080 DUPLICATE OR LOST CERTIFICATE; 40-3.86(6)-S86090 FEES SCHEDULE; 40-3.86(6)-S86100 SUSPENSIONS AND REVOCATIONS; 40-3.86(6)-S86105 CORPORATE OR MULTI-PERSON FIRMS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 16, 1979, the Board of Professional Engineers and Land Surveyors proposes to amend ARM 40-3.86(6)-S8630 concerning quorums; 40-3.86(6)-S8660 concerning approval of schools; 40-3.86(6)-S8680 concerning affiliation with National Associations; 40-3.86(6)-S8690 concerning a code of ethics; 40-3.86(6)-S86010 subsections (1) and (2) concerning preparation and publication of rosters, notices and orders; 40-3.86(6)-S86020, subsections (2)(b) and (7) concerning applications; 40-3.86(6)-S86030 subsections (3)(d), (e), (i) and (j); 40-3.86(6)-S86040 concerning preparation of licenses; 40-3.86(6)-S86050 concerning examinations; 40-3.86(6)-S86060 concerning renewals; 40-3.86(6)-S86070 subsections (3)(a) and (5) (e)

concerning reciprocity for professional engineers; 40-3.86(6)-S86080 concerning duplicate or lost licenses; 40-3.86(6)-S86090 concerning a fee schedule; 40-3.86(6)-S86100 concerning suspensions and revocations; and 40-3.86(6)-S86105 subsection (4) concerning corporate or multi-person firms.

2. The Board is proposing these amendments to comply with the changes in the statute as per Senate Bill 422, enacted as Chapter 408, Montana Session Laws, 1979.

3. The proposed amendment to 40-3.86(6)-S8630 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S8630 QUORUM (1) ~~Four~~Five members of the Board shall constitute a quorum of any meeting."

The rule implements section 37-67-201(3) MCA.

4. The proposed amendment of 40-3.86(6)-S8660 will add a new subsection (3) and will read as follows: (new matter underlined)

"40-3.86(6)-S8660 APPROVAL OF SCHOOLS (1)...

(2)..

(3) The Board will make a list available that shows the Montana schools offering surveying curricula acceptable to the Board. All course credits acceptable as transferrable to the surveying curricula of any school approved by the Board will be acceptable by the Board when transfer is accomplished by the applicant."

The rule and proposed amendment implement section 37-67-306 (1) MCA.

5. The proposed amendment of 40-3.86(6)-S8680 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S8680 AFFILIATION WITH NATIONAL ASSOCIATIONS (1) The Board may affiliate with the National Council of State Boards of Engineering Examiners. Any delegate or delegates to the Council appointed by the Board shall attend ~~the annual~~ meetings of the Council at the expense of the Board."

The rule and proposed amendment implements section 37-67-202 MCA.

6. The proposed amendment to 40-3.86(6)-S8690 changes the catch phrase and adds rules of professional conduct and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S8690 ~~CODE OF ETHICS~~ RULES OF PROFESSIONAL CONDUCT (1) The Board will expect all engineers and land surveyors to uphold and advance the honor and dignity of the Engineering and Surveying Profession and Registration Law within the ethical standards ~~set forth in the "Code of Ethics" included on the application form~~ encompassed in the following 'Rules of Professional Conduct'.

(2) In order to safeguard life, health and property, to promote the public welfare, and to establish and

maintain a high standard of integrity and practice, the following rules of professional conduct shall be binding on every person holding a certificate of registration authorizing that person to offer or perform engineering or land surveying services in this state.

(3) All persons registered under Montana law are charged with having knowledge of the existence of these rules of professional conduct, and shall be deemed to be familiar with their provisions and to understand them. Such knowledge shall encompass the understanding that the practice of engineering and land surveying is a privilege, as opposed to a right.

(4) In these rules of professional conduct, the word 'registrant' shall mean any person holding a license or certificate issued by this board.

(5) Registrants in the fulfillment of their professional duties, shall:

(a) hold paramount the safety, health and welfare of the public in the performance of their professional duties;

(i) Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgement is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.

(ii) Registrants shall approve and seal only those design documents and surveys, reviewed or prepared by them, which are safe for public health, property and welfare in conformity with accepted engineering and land surveying standards.

(iii) Registrants shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client, or employer except as authorized or required by law.

(iv) Registrants shall not permit the use of their name or firm name nor associate in business ventures with any person or firm which they have reason to believe is engaging in fraudulent or dishonest business or professional practices.

(v) Registrants having knowledge of any alleged violation of any of these rules of professional conduct, shall cooperate with the Board by furnishing such information or assistance as may be required.

(b) perform services only in the areas of their competence;

(i) registrants shall undertake assignments only when qualified by education or experience in the specific technical fields of engineering or land surveying involved.

(ii) registrants shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any such plan or document not prepared or reviewed under their direct supervisory control.

(iii) Registrants may accept an assignment outside of their fields of competence to the extent that their services are restricted to those phases of the project in which they are qualified, and to the extent that they are satisfied that all other phases of such project will be performed by qualified associates, consultants or employees.

(iv) In the event a question arises as to the competence of a registrant in a specific technical field which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request of the registrant or on its own volition, shall admit the registrant to an appropriate examination.

(c) issue public statements only in an objective and truthful manner;

(i) Registrants shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony.

(ii) Registrants may express publicly a professional opinion on technical subjects only when that opinion is founded upon adequate knowledge or the facts and competence in the subject matter.

(iii) Registrants shall issue no statements, criticisms or arguments on technical matters which are inspired or paid for by interested parties, unless the registrants have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the registrants may have in the matters.

(d) act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest;

(i) Registrants shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest, or other circumstances which could influence their judgement or the quality of their services.

(ii) Registrants shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pretaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(iii) Registrants shall not solicit or accept financial or other valuable consideration, directly or

indirectly, from contractors, their agents, or other parties in connection with work for employers or clients for which the registrant is responsible.

(iv) Registrants in public service as members, advisors or employees of a governmental body or department shall not participate in decisions with respect to professional services solicited or provided by them or their organizations.

(v) Registrants shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of the appropriate public authority.

(e) avoid improper solicitation of professional employment;

(i) Registrants shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incidental to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments with the intent and purpose of enhancing their qualifications and their work.

(ii) Registrants shall not offer, give, solicit or receive, either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, but which may be reasonably construed by the public of having the effect or intent to influence the award of a contract."

The rule implements section 37-67-331 (d) MCA.

7. The proposed amendment to 40-3.86(6)-S86010 amends subsections (1) and (2) of this rule and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S86010 PREPARATION AND PUBLICATION OF ROSTERS, NOTICES, AND ORDERS (1) The Secretary of the Board shall oversee the publishing and distribution of a roster each ~~year during the month of April in accordance with section 66-2335 of the registration law~~ biennium as required in Section 37-67-318 MCA, with addendums, as deemed necessary by the Board.

(2) The Chairman shall direct meeting notices to be prepared, distributed and published in accordance with~~, as listed in Chapter 6 of this title, MAC 40-3.86(6)-S86040 (3)~~ the procedural rules, section

40-3.86(2)-P8610."

The rule implements section 37-67-318 MCA.

8. The proposed amendment to 40-3.86(6)-S86020 deletes (2)(b) and amends (7). The proposed deletion and amendment will read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S86020 APPLICATIONS.....

(2)...~~(b) The conditions set out in the application form, including the Code of Ethics, shall be construed to be a part of the rules and regulations.~~

.....(7) Applications by holders of National ~~Engineering Certificates~~ Certification of Registration Records: Applicants who have a current ~~NBEE~~ NCRR ~~certificate~~ number must complete the following section of the Application for Registration as Professional Engineer. 1. General Information, 2. Registration in other states, 9. Affidavit."

The rule and proposed changes implements section 37-67-303 MCA.

9. The proposed amendment to 40-3.86(6)-S86030 deletes (3)(d), (i) and (j), amends (e), the deletions and amendments will read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S86030 GRANT AND ISSUE LICENSES.....

(3)...~~(d) Education may be considered as Pre-Professional or Land Survey Work experience for applications considered under "Temporary Qualifications". Each academic year successfully completed in a school approved by the Board shall be rated as one (1) year of Pre-Professional or Land Survey Work experience. However, not more than two (2) years experience shall be credited to undergraduate education qualifications.~~

(e) Experience time may not be counted as Pre-Professional or Sub-Professional for work done during years counted for education.

~~..(i) Part-time survey work, if any, which may or may not run concurrent with a full-time engagement, shall be listed as a separate engagement with total hours worked converted to years by dividing by a normal work year of 2080 hours.~~

~~(j) Full-time work is considered a normal work week of 40 or more hours.~~..."

The rule and proposed changes implements section 37-67-305 MCA.

10. The proposed amendment of 40-3.86(6)-S86040 will read as follows: (new matter underlined)

"40-3.86(6)-S86040 PREPARATION OF LICENSES (1) Registration Number: At the time an applicant is voted registration by the Board, he will be assigned a serial number and issued a certificate of registration as a Professional

Engineer and/or Land Surveyor as appropriate. These numbers will be issued consecutively in the order in which the applications are approved by the Board. The applicant will be advised of his serial number in the notice sent him."

The rule and proposed amendment implements section 37-67-314 MCA.

11. The proposed amendment to 40-3.86(6)-S86050 changes the catch phrase to read as follows: (new matter underlined)

"40-3.86(6)-S86050 EXAMINATION PROCEDURES ...."

This rule implements section 37-67-311 MCA.

12. The proposed amendment to 40-3.86(6)-S86060 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S86060 EXPIRATION - RENEWALS --~~FEES-~~VERIFICATION OF COMPETENCY (1) Certificates of registration expire ~~each~~ on December 31 of the appropriate year and shall be renewed as outlined in Section ~~66-2361~~ 37-67-315 MCA upon receipt of the renewal fee set by the Board.

(2) The failure on the part of any registrant to renew his certificate ~~annually~~ in the month of December as required above shall not deprive such person of the right of renewal. If the process of renewal is not completed within 24 months of the expiration of the certificate, the applicant shall be considered a new applicant with all pertinent laws and rules applying.

(3) Late Renewal: ~~but t~~The fee to be paid for the renewal of a certificate after the month of December shall be increased ten percent for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fees.

(4) The department will notify every registered person by mailing a letter to the address in the roster or to a corrected address 30 to 60 days prior to the date of expiration of his certificate. The letter will specify the fees for renewal for a 2 year period. The letter will include a form for a verification of competency which the registrant must sign and return to the Board.

(5) Verification of competency: At the time the registrant applies for renewal, he is to verify that he has maintained his competency.

(a) The certification by the registrant that he has practiced engineering or land surveying for a minimum of 520 hours during each of the two years preceding renewal is accepted as verification of competency.

(b) If the registrant has not continued in practice as in (a), he must provide evidence to the board that a minimum combined time of 520 hours per year of practice,

formal course work, home study, and/or group study have been completed. Certification of the preceding will be accepted as verification of competency."

This rule and proposed changes implements section 37-67-315 MCA.

13. The proposed amendment to 40-3.86(6)-S86070 deletes subsection (3)(a) and amends (5)(e). The deletion and amendment read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S86070 RECIPROCITY FOR PROFESSIONAL ENGINEERS

....(3)...~~(a)--Engineers-holding-a-certificate-of-qualification-issued-by-the-National-Council-of-Engineering-Examiners-Committee-on-National-Engineering-Certification-(NEC).~~

.....(5)...(e) Such persons shall remit-~~sixty-dollars ($60)~~-$100 with his permit form. "

The rule and proposed amendments implement sections 37-67-312 and 319 MCA.

14. The proposed amendment to 40-3.86(6)-S86080 adds a new subsection (2) and will read as follows: (new matter underlined)

"40-3.86(6)-S86080 DUPLICATE OR LOST CERTIFICATE

..(2) The fee for duplicate certificate is $15.00."

The rule and proposed change implements section 37-67-316 MCA.

15. The proposed amendment of 40-3.86(6)-S86090 amends subsection (3) and adds a new subsection (4) and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.86(6)-S86090 FEES SCHEDULE .....

.(3) The ~~annual~~ biennial renewal fee for registration as a Professional Engineer or Land Surveyor, shall be ~~twelve-dollars-($12)~~ $40.00. ~~or~~ For Professional Engineer and Land Surveyor (ES), it shall be-~~eighteen-dollars ($18)~~ $60.00.

(4) The remainder of the fees shall be as follows:

(a)	EIT Application and test	$ 30.00
(b)	PE (original) Application	40.00
(c)	PE Test (re-test)	30.00
(d)	PE Comity Application	60.00
(e)	LSIT Application and Test	30.00
(f)	LS Application and Test	40.00
(g)	LS Comity and test	80.00
(h)	ES Comity and LS test	100.00
(i)	EIT Transfer	10.00
(j)	Temporary Permit	100.00"

The rule and proposed changes implements sections 37-67-303, and 315 MCA.

16. The proposed amendment to 40-3.86(6)-S86100 adds a new subsection (3) and will read as follows: (new matter underlined)

"40-3.86(6)-S86100 SUSPENSIONS AND REVOCATIONS.....
(3) Individuals shall cease practicing the profession."

The rule and proposed amendment implements section 37-67-331 MCA.

17. The proposed amendment to 40-3.86(6)-S86105 deletes subsection (4) of the rule. The deletion reads as follows: (deleted matter interlined)

"40-.386(6)-S86105 CORPORATE OR MULTI-PERSON FIRMS.....
~~(4) --All entities offering Engineering or land surveying services in the state must be represented by residents registered under this Act.~~"

18. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Professional Engineers and Land Surveyors, Lalonde Building, Helena, Montana 59601, no later than December 14, 1979.

19. 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 Professional Engineers and Land Surveyors, Lalonde Building, Helena, Montana 59601, no later than December 14, 1979.

20. 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 the hearing will be published in the Montana Administrative Register.

21. The authority of the Board to make the proposed amendments is based on section 37-67-202 MCA. The implementing sections are listed after each proposed change.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
MAURICE E. GUAY, CHAIRMAN

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

Certified to the Secretary of State, November 6, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF ADOPTION OF RULES IMPLEMENTING SB 221, relating to the enforcement of child support obligations	NOTICE OF PUBLIC HEARING for Adoption of Rules to establish a child support contribution table.

TO: All Interested Persons:

1. On December 11, 1979 at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of rules creating a table of suggested minimum monthly child support contributions.

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

3. The proposed rules provide as follows:

Rule I DEFINITIONS As used in rules I through VIII, the following definitions apply:

(1) "Assets" means the dollar value of the equity (based on market value) of all assets owned by a responsible parent, including real and personal property and tangible and intangible property, with the exception of that property listed in Rule II.

(2) "Income" means total yearly income received by the resonsible parent from all sources with the exception of those sources listed in Rule III.

(3) "Monthly income" means 1/12 of income.

(4) "Monthly gross available resources" means the sum of monthly income and ½% of assets.

(5) "Monthly net available resources" means monthly gross available resources less the adjustments provided by Rules IV through VI.

Rule II EXEMPTIONS FROM ASSETS In computing the assets, the following properties are not included:

(1) a permanent residence and up to 1 acre of appurtenant land;

(2) furnishings of the permanent residence; and

(3) one motor vehicle for personal use.

Rule III EXEMPTIONS FROM INCOME The income from the following sources is not included in the computation of income as defined in Rule I:

(1) income from public assistance; and

(2) income from supplemental security income.

Rule IV ADJUSTMENT FOR DEDUCTIONS AND CERTAIN LIVING EXPENSES (1) In computing monthly net available resources, the following items (computed on a monthly basis) are subtracted from the monthly gross available resources:

a. federal income tax (withholdings or estimated taxes at an appropriate level);

b. federal social security tax (FICA);
c. state and other local income tax (withholdings or estimated taxes at an appropriate level);
d. state unemployment insurance tax, where applicable;
e. state disability insurance;
f. union dues, where required;
g. retirement contributions (other than FICA) if required as a condition of employment; and
h. garnishment or similar proceedings as provided by state law, solely for the payment of support obligations and any arrearages.

(2) Except for those expenses listed in Rule VI, expenses under the control of the responsible parent may not be deducted from gross available resources to determine net available resources. Such nondeductible expenses include but are not limited to:
a. savings bonds purchase;
b. contributions to religious, charitable or educational organizations;
c. credit union savings or loan payment except for child support;
d. premiums for medical and hospital insurance (unless coverage includes responsible parent's children in the custodial family);
e. deferred annuity payments; and
f. contributions to retirement programs that are not a condition of employment.

Rule V ADJUSTMENT FOR LIVING STANDARDS (1) In computing monthly net available resources, an allowance for adult living standards is subtracted from the monthly gross available resources according to the following table (based on the number of adults in the household dependent upon the responsible parent):

1 ADULT	2 ADULTS	EACH ADDITIONAL ADULT
$426	$558	$230

Rule VI ADJUSTMENT FOR SPECIAL NEEDS (1) In computing monthly net available resources, the following items (computed on a monthly basis) are subtracted from the monthly gross available resources:
a. medical expenses, when not reimbursed by insurance and when the cost exceeds the amount provided for medical care in the dependent adult standard (11.3%);
b. payments on debts contracted for large medical or dental expenses, not reimbursed by insurance;
c. when related to a medical or health problem, educational expenses or special child care arrangements;

d. child care costs for a child counted as a dependent in the responsible parent's household, when necessary to enable the parent to be employed;

e. cost of special clothing or equipment required for employment and not reimbursed by the employer.

(2) The purpose of an adjustment for special needs is to avoid serious inequities in those situations where the expense is beyond the control of the responsible parent and failure to take into account such expense would lead to undue hardship.

Rule VII CHILD SUPPORT COMPUTATION (1) The minimum monthly child support contribution is obtained from the table in Rule VIII by identifying the responsible parent's monthly net available resources and the total number of children dependent upon the responsible parent.

(2) The table referred to in subsection (1) is published in the Montana Administrative Register and is updated each year by means of a rule-making proceeding. Copies of the table are available at the Child Support Enforcement Bureau; Department of Revenue; Mitchell Building; Helena, Montana 59601, or may be viewed at the office of the Clerk of the District Court.

Rule VIII CONTRIBUTION TABLE (1) The table on the following page is used to compute the suggested minimum monthly child support contribution. (see next page) The Table entries give the monthly minimum support payment per child. The obligation is obtained by multiplying the monthly support per child by the number of dependent children for whom support is sought.

MONTHLY CHILD SUPPORT
MINIMUM PER CHILD
CONTRIBUTIONS TABLE

RESPONSIBLE PARENT'S MONTHLY NET AVAILABLE RESOURCES	TOTAL # OF DEPENDENT CHILDREN								
	1	2	3	4	5	6	7	8	9
0-9	0	0	0	0	0	0	0	0	0
10-19	9	4	3	2	1	1	1	1	1
20-29	18	9	6	4	3	3	2	2	2
30-39	27	13	9	6	5	4	3	3	3
40-49	36	18	12	9	7	6	5	4	4
50-74	45	22	15	11	9	7	6	5	5
75-99	67	33	22	16	13	11	9	8	7
100-124	90	45	30	22	18	15	12	11	10
125-149	112	56	37	28	22	18	16	14	12
150-174	135	67	45	33	27	22	19	16	15
175-199	157	78	52	39	31	26	22	19	17
200-224	180	90	60	45	36	30	25	22	20
225-249	202	101	67	50	40	33	28	25	22
250-274	225	112	75	56	45	37	32	28	25
275-299	247	123	82	61	49	41	35	30	27
300-324	270	135	90	67	54	45	38	33	30
325-349	275	146	97	73	58	48	41	36	32
350-374	280	157	105	78	63	52	45	39	35
375-399	285	168	112	84	67	56	48	42	37
400-424	290	180	120	90	72	60	51	45	40
425-449	300	191	127	95	76	63	54	47	42
450-474	305	202	135	101	81	67	57	50	45
475-499	310	207	142	106	85	71	61	53	47

MONTHLY CHILD SUPPORT
MINIMUM PER CHILD
CONTRIBUTIONS TABLE

RESPONSIBLE PARENT'S MONTHLY NET AVAILABLE RESOURCES	TOTAL # OF DEPENDENT CHILDREN								
	1	2	3	4	5	6	7	8	9
500-524	315	212	150	112	90	75	64	56	50
525-549	320	217	157	118	94	78	67	59	52
550-574	325	222	165	123	99	82	70	61	55
575-599	330	227	172	129	103	86	73	64	57
600-624	335	232	180	135	108	90	77	67	60
625-649	340	237	187	140	112	93	80	70	62
650-674	345	242	191	146	117	97	83	73	65
675-699	350	247	195	151	121	101	86	75	67
700-724	355	252	199	157	126	105	90	78	70
725-749	360	257	203	163	130	108	93	78	70
750-774	365	262	207	168	135	112	96	84	77
775-799	370	267	211	174	139	116	99	87	77
800-824	375	272	215	178	144	120	102	90	80
825-849	380	277	219	182	148	123	106	92	82
850-874	385	282	223	186	151	127	109	95	85
875-899	390	287	227	190	154	130	112	98	87
900-924	395	292	231	194	157	133	115	101	90
925-949	400	297	235	198	160	136	118	103	92
950-974	405	302	239	202	163	139	121	105	93
975-999	410	307	241	206	166	142	124	107	94
1,000-1,049	415	312	245	210	169	145	127	110	95
1,050-1,099	420	317	249	214	172	148	130	112	96
1,100-1,149	425	322	253	218	175	151	133	114	97
1,150-1,199	430	327	257	222	178	154	136	116	98

(Additional computations are available from the Department of Revenue, Child Support Enforcement Bureau, Mitchell Building, Helena, Montana 59601.

4. The Department of Revenue is proposing these rules because it was mandated by the Legislature to establish a scale of suggested minimum contributions to assist the Department in administratively determining the financial child support responsibilities of non-custodial parents. The Contribution Table is also to be made available to counties and courts for their use in determining the amount that non-custodial parents should be expected to contribute toward the support of their children.

In arriving at the Contribution Table, numerous factors were considered in an attempt to balance the needs of dependent children with the ability of parents to pay. For example, all sources of income are included except income from public assistance or supplementary security income since income from these two sources is already based on the means of the recipient. Certain assets are excluded from monthly gross available resources because these assets provide the parent with basic necessities. Only ½% of assets are considered to be monthly gross available resources in order to prevent too rapid a depletion of the parent's resources.

The adult living standard figures are based on statistics compiled by the U. S. Department of Labor, Bureau of Labor Statistics.

Since special needs arise over which the responsible parent has no control, adjustments are made in certain named circumstances. Overall, the rules attempt to balance the needs of dependent children with the needs and resoures of responsible parents.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than December 14, 1979 to:

Susan Stratman
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

6. John Clark has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on section 40-5-202, MCA. The rules implement section 40-5-214, MCA.

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 11-5-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of Rule 42-2.2(1)-P200) Model Procedural Rules)	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.2(1)-P200 relating to model procedural rules.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1979, the Department of Revenue proposes to amend rule 42-2.2(1)-P200, relating to model procedural rules.

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

42-2.2(1)-P200 MODEL PROCEDURAL RULES (1) The Department of Revenue ~~has herein adopted and incorporated the Attorney General's Model Procedural Rules 1 through 38 by reference to such rules as stated in MAC 1-1.6(2)-P650 through 1-1.6(2)-P6320 of this code.~~ adopts and incorporates by reference the model procedural rules, as amended, promulgated by the Attorney General.

(2) The model procedural rules may be found in Title 1, Chapter 3, of the Administrative Rules of Montana.

3. The model procedural rules promulgated by the office of the Attorney General have recently been revised. Because of the wording of the department of revenue's present rule, the department would continue to operate under the old model rules or possibly under no model rules at all. To remedy this difficulty, the present amendment is proposed. The text of the Attorney General's rules can be found on pages 881 through 921 of the 1979 Montana Administrative Register, issue no 16, and pages 1198 through 1238 of the 1979 Montana Administrative Register, issue no. 19.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing no later than December 14, 1979, to:

Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

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

request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than December 14, 1979.

6. If the department receives requests for a public hearing from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the legislature; from a governmental subdivision; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been estimated to be greater than 25 based upon the number of persons subject to the tax laws.

7. Authority to make the proposed amendment is given by 15-1-201, MCA. The proposed amendment implements 2-4-201, MCA.

Mary L. Craig

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 11-5-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE amendment of rules relating to allocation and apportionment of income.	)))	NOTICE OF PROPOSED AMENDMENT OF CERTAIN RULES relating to allocation and apportionment of income under the Multistate Tax Compact and Title 15, Chapter 31, Part 3, MCA.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1979, the Department of Revenue proposes to amend rules 42-2.6(4)-S61760, S61770, S61840, S61850, S61880, S61910, S61920, S61930, S61940, S61980, S61990, S62000, and S62020, relating to allocation and apportionment of income under the Multistate Tax Compact and Title 15, chapter 31, part 3, MCA.

2. The proposed amendments delete the numerous examples found in the listed rules. The material proposed for deletion is labeled as "Example" in the rules. A copy of the full text of the proposed amendments may be obtained by writing Laurence Weinberg at the address given in paragraph 4.

3. The rules being amended were first promulgated by the Interstate Tax Commission in February, 1973. Following rule-making proceedings in Montana, the rules were adopted on 12/15/76 and became effective on 1/2/77. The various examples that are proposed for deletion were part of the Commission rules and were adopted with the text of the rules. In implementing the rules over the past few years, the department has found the examples to be confusing and of a little value. Actual situations contain many factors, and the simplified situations adressed by the examples are not accurately reflected in real-life occurrences. Specific problem areas are best accomodated by rulings based on all the relevant factors. Consequently the examples contained in the Commission regulations are proposed for deletion.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing no later than December 14, 1979, to:

Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

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

request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than December 14, 1979.

6. If the department receives requests for a public hearing from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the legislature; from a governmental subdivision; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been estimated to be greater than 25 based upon the number of coporations deriving income from multistate operations.

7. Authority to make the proposed amendments is given by 15-1-201 and 15-31-313, MCA. The proposed amendments implement 15-1-601, MCA, and Title 15, Chapter 31, part 3, MCA.

Mary L. Craig

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 11-5-79

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption) of a rule relating to the) number of signatures required) for Petitions for Nomination) in certain instances)	NOTICE OF PROPOSED ADOPTION OF A RULE FOR NUMBER OF SIGNATURES FOR PETITIONS FOR NOMINATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1979, the Secretary of State proposes to adopt a rule relating to the number of signatures required for Petitions for Nomination in certain instances.

2. The proposed rule provides as follows:

RULE I NUMBER OF SIGNATURES REQUIRED FOR PETITIONS FOR NOMINATION IN CERTAIN INSTANCES (1) The following schedule is to be used for determining the number of signatures required for Petitions for Nomination when the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office:

(a) for a state-wide office--1000 signatures;

(b) for a member of the house of representatives or state senator--25 signatures;

(c) for any other district or political subdivision as follows:

Number of Qualified Electors	Number of Signatures
10,001 and over	100
1,001 thru 10,000	50
101 thru 1,000	25
less than 100	25% of the qualified electors but in no case less than 2

3. This rule is proposed to provide ballot access to those persons filing Petitions for Nomination in certain instances where the Montana Code Annotated does not provide for the number of signatures required.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Leonard C. Larson, Room 202, Capitol Building, Helena, Montana 59601, no later than December 13, 1979.

5. The authority for this rule is Section 13-1-202, MCA, and the implementing section is based on Section 13-10-502(3), MCA.

Dated this 6th day of November, 1979

Frank Murray

FRANK MURRAY
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of rules for the submission of voting machines and devices for examination) NOTICE OF PROPOSED ADOPTION OF RULES ON EXAMINATION OF VOTING MACHINES AND DEVICES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1979, the Secretary of State proposes to adopt rules relating to the submission of voting machines and devices for examination.

2. The proposed rules provide as follows:

RULE I EXAMINATION OF VOTING MACHINES AND DEVICES

(1) The Secretary of State is empowered under Section 13-17-101, MCA, to approve voting machines and devices.

(2) DEFINITIONS. Unless the context clearly requires otherwise, the following terms shall have the following meanings.

(a) "Applicant" means any person or business entity which has applied for inspection of a voting machine or device under these Rules. The term includes an agent or agents of the applicant.

(b) "Automatic tabulating equipment" means and includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(c) "Ballot card" means a ballot which is used for voting by the process of punching.

(d) "Ballot labels" means the cards, papers, booklets, pages or other material containing the names of offices and candidates and statements of measures to be voted on.

(e) "Ballot" includes ballot cards, ballot labels and paper ballots.

(f) "Device" means an apparatus used for voting through the process of punching, piercing or otherwise marking of a ballot. Ballots are counted using automatic tabulating equipment.

(g) "Examiners" any or all persons having authority to conduct the examination under Rule I(3) of these Rules.

(h) "Interested party" includes all persons charged with any duty under the election laws of Montana, any manufacturer of or dealer in mechanical voting machines, voting devices or components thereof and agents of such manufacturer or dealer and any person otherwise affected by these Rules.

(i) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

(j) "Mechanical voting machine" means an appartus used for voting that is self-contained using levers and providing a tabulating system within the machine.

(k) "System" includes a self-contained mechanical voting machine or an electronic voting device and the individual components of each.

(l) "Voting machine" means a mechanical apparatus on which to cast votes.

(3) Such examination shall be conducted by the Secretary of State, or, with his authority, by one or more Deputy Secretaries of State. The Secretary of State or his Deputy or Deputies may be assisted by not more than two qualified electors of the State of Montana in such examination.

(4) The examination shall be held on a day to be agreed upon by the applicant and the Secretary of State, and shall commence not earlier than 9:00 A.M. nor later then 2:00 P.M. on such day.

(5) The place of examination shall be in the City of Helena, County of Lewis and Clark, State of Montana, at such location as may be agreed upon by the applicant and the Secretary of State.

(6) Examination of voting machines and devices shall be made only upon application to the Secretary of State. Such application shall be in writing and shall contain the following information and statements.

(a) The name and address of the applicant. If applicant is a corporation, the state of incorporation shall be stated.

(b) A statement that the applicant thereby applies for an examination of a voting machine or device pursuant to the provisions of the Montana Code Annotated and of these Rules.

(c) A description of the system to be presented for examination, including the common name of the system, as well as a statement or description of the trademark or other mark used to identify the system.

(d) The proposed time, including the day and hour, at which such examination shall be held.

(e) The proposed place, including street and number, if known, at which such examination shall be held.

(f) A statement that the applicant will pay a reasonable fee for the services of not more than two qualified electors of the State of Montana, if called to assist the Secretary of State or his Deputy or Deputies under RULE I(3) of these Rules, at a rate not to exceed $10.00 per day or fraction thereof for the time actually spent in such assistance.

(g) Such application need not be acknowledged or verified by the applicant.

(7) Such application shall be submitted to the Secretary of State not less than ten days prior to the day proposed therein for examination of the system. An application shall be deemed to be submitted when it has actually been received in the office of the Secretary of State. Upon receipt of such application, the Secretary of State shall confirm in writing

that the examination will be held at the time and place proposed, or at such other time or place, or both, as he may indicate in his reply, in which case the applicant shall indicate his agreement in writing to the new time or place or both. If applicant and Secretary of State do not agree upon the time or place of examination proposed by the Secretary of State, the application shall be re-submitted not earlier than 30 days after such failure to agree.

(8) No application may be submitted to the Secretary of State later than 90 days prior to the date of the election at which the machines are proposed to be used.

RULE II CONDUCT OF EXAMINATION (1) The following materials shall be provided by the applicant at the place agreed upon for the examination.

(a) At least one fully operative system unit or set conforming to the description of the same contained in the application.

(b) At least one copy of any brochures, pamphlets, and descriptive or sales material of any kind intended for use in promoting the same for use of such system in Montana.

(c) Samples of any training aids supplied by the applicant for the use of election officials.

(d) Where applicable sample ballots suitable for use in the system substantially in the form required by Montana law for a primary and general election in a year in which a President of the United States of America is to be elected. Such ballots for the general election sample shall also contain a measure or Constitutional amendment to be voted upon.

(e) Where applicable a set of programmed ballots having a known count for each office or measure listed thereon, which count shall be declared before any test tabulation of said ballots is made.

(f) Copies of any other material required by law to be displayed at the polls, or useful for the instruction or information of voters at the polls.

(g) If not contained in other materials, data on the extent of use and length of use of the system being examined in other jurisdictions.

(h) Available data pertinent to Rule III(2) of these Rules.

RULE III CRITERIA OF CONSTRUCTION (1) Voting machines or devices shall meet the following requirements.

(a) They shall permit and require an elector to vote in secret.

(b) They shall prevent an elector from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote.

(c) They shall permit an elector to secretly select the party for which he wishes to vote in a primary election and

the machine or device will count only votes for the candidates of that party by the elector in the primary election.

(d) They shall permit an elector to vote a split ticket in a general election if he desires.

(e) They shall register and record every valid vote cast.

(f) They shall be constructed so that they cannot be tampered with for a fraudulent purpose.

(g) They shall also be constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue.

(h) They shall allow write-in voting.

(i) They shall provide that the ballot may be rotated as provided in Section 13-13-205, MCA, without substantially impairing the efficiency or accuracy of the tabulation of such rotated ballots.

(j) The applicant shall guarantee to provide training and assistance to election officials included in each contract for purchase of a machine or device.

(k) They shall comply with all other requirements of the election laws, so far as they are applicable.

(2) Voting machines or devices shall be constructed of materials sufficiently durable to withstand normal wear and tear due to usage, storage and transportation. It is the intent of this Rule that the system shall have a useful life of ten years or more without major mechanical or electronic failure due solely to normal use, storage and transportation. Applicant shall submit data pertinent to this Rule, if available.

(3) Such system shall be fully guaranteed as to parts and workmanship for a period of not less than two years from date of purchase, and the manufacturer shall be prepared to provide maintenance and repair service for such system at a rate to be agreed upon by the manufacturer, dealer or agent of either and the purchasing entity.

(4) Each system or each component of any system shall remain operative and unimpared in efficiency and accuracy in the physical and electrical environment normally found in polling places and other places used for election purposes, including places to which ballots are taken for purposes of tabulation.

(a) The system shall be so contructed as to operate in atmospheric temperatures ranging from 65 to 90 degrees Fahrenheit.

(b) The system shall be so constructed as to operate without being affected by variations in the voltage or amperage of the power supply normally found in places where it is to be used.

(c) Any system utilizing photoelectric or photosensitive components shall be so constructed that it will operate in the presence of light intensity on the order of that caused by the

use of flashbulbs or other lighting, whether intermittent or continuous, used for photographic purposes.

(5) The system shall provide a mechanical or procedural means whereby a voter may cast a write-in vote for any person for any office, and whereby such voter shall be prevented from voting for another person for such office on the regular ballot.

(6) Automatic tabulating equipment shall provide a visible or audible signal to the operator thereof in the following cases. The purpose of this Rule is to permit isolation and identification of ballots rejected by the tabulating equipment, so that they may be examined for evidence of the intent of the voter.

(a) If a ballot cannot be tabulated by the system due to a physical defect in the ballot, the machine shall signal rejection of the ballot.

(b) If a ballot or part thereof has been rejected because the voter has voted for a number of persons for an office in excess of the number he is entitled to vote for, the machine shall signal rejection of the ballot.

(7) Where applicable no device shall be approved if the act of voting by an elector does not produce a visible effect upon the ballot, either by piercing thereof or by application of a visible substance to the ballot.

RULE IV CRITERIA OF EXAMINATION (1) The examination of a mechanical voting machine shall be conducted by the examiner or examiners as follows:

(a) It shall be determined that an elector is permitted and required to vote in secret. This shall mean only that the voting shall be done under the conditions of secrecy which are recognized in elections as presently conducted with paper ballots.

(b) It shall be determined that an elector is prevented from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote.

(c) It shall be determined that an elector may secretly select the party for which he wishes to vote in a primary election and the machine will count only those votes for the candidates of that party by the elector in the primary election.

(d) It shall be determined that an elector is permitted to vote a split ticket in a general election if he desires.

(e) It shall be determined that every valid vote cast is registered and recorded.

(f) It shall be determined that the system is constructed so it cannot be tampered with for a fraudulent purpose.

(g) They shall also be constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue.

(h) It shall be determined that an elector may write-in his vote.

(i) It shall be determined that the system will allow for rotation of the ballot without substantially impairing the efficiency or accuracy of the tabulation of such rotated ballots.

(j) It shall be determined that a guarantee to provide training and assistance to election officials is included in each contract for purchase of a mechanical voting machine.

(k) It shall be determined that if levers or buttons of any description are used as the method of casting a ballot that such levers or buttons will produce a positive vote regardless if they are fully depressed or not.

(l) If the system includes its own voting booth or compartment, such compartment shall be of a sufficient size to accommodate a voter who requires assistance in casting his ballot, as well as those persons whom he legally may call to his aid in casting his ballot.

(m) It shall be determined, in the judgement of the examiners whether or not the system complies with all other applicable requirements of the election laws.

(2) The examination of a voting device shall be conducted by the examiner or examiners as follows:

(a) It shall be determined that the criteria in Rule IV(a) thru (k) are met.

(b) By tabulation of the pre-programmed materials supplied under Rule II(l)(e) of these Rules, it shall be determined whether the tabulating apparatus will count accurately on no less than two nor more than five tabulations of the materials so supplied. Any difference in count on any tabulation of pre-programmed material shall be deemed a material cause for rejection of the system.

(c) A set of sample ballots, not less than 25 nor more than 100 in number, shall be marked or pierced at the site of the examination by a person present other than the applicant or his agent. Such set shall be tabulated no less than two nor more than five times. The failure of any subsequent tabulation to agree completely with the initial tabulation shall be deemed a material cause for rejection of the system.

(d) At least two of the ballots marked or pierced under Rule IV(l)(b) shall contain a vote for one office in excess of the number of votes which an elector would be entitled to cast for such office. Failure of the machine to reject such ballot shall be deemed a material cause for rejection of the system.

(e) The manufacturer or his agent shall demonstrate the extent to which bending, folding or otherwise abusing a ballot or ballot card is possible without causing said ballot or ballot card to be unusable in the tabulating equipment. If more than one per cent of the ballots marked or pierced at the site of the examination shall be rejected by the tabulating equipment for such cause, such rejection shall be deemed a material cause for rejection of the system.

(f) If the system being examined uses a paper ballot which is to be marked with ink or other visible substance, the manufacturer or his agent shall demonstrate the extent to which a mark may fail to cover the voting space, or fail to be in ideal position before the vote shall fail to be counted by the tabulating equipment.

(g) Failure of the tabulating equipment to count a vote cast because of the condition of the mark made thereon shall be deemed a material cause for rejection of the system, if, in the opinion of the examiners, such mark would have been counted for the person voted for if the ballots were manually tabulated.

RULE V COSTS OF EXAMINATION (1) All costs of examination shall be borne by the applicant. Such costs include, but not by way of limitation, the costs of transporting the system to the examination site, compensation of any persons the Secretary of State or his Deputy or Deputies may have employed under Rule II(2) of these Rules, and costs incidental to the storage or display of the system. Such costs shall not be deemed to include the compensation of the Secretary of State or Deputy or Deputies as allowed by law during the time of the examination.

RULE VI NOTIFICATION TO APPLICANT (1) Within 30 days after completion of such examination, the Secretary of State or his Deputy or Deputies shall prepare and file in his office a report of his findings with respect to the system examined, which report shall include the following.

(a) A statement of the name and address of the applicant.

(b) A description of the system, which shall be the description provided by the applicant in his application.

(c) A brief statement of the time, place and manner of conducting the examination.

(d) A statement that the system is approved or disapproved.

(e) If the system is disapproved, a statement of the reasons therefor, including a specification of the provisions of the MCA and these Rules affecting such findings.

(2) A copy of such report shall be forwarded by certified mail, return receipt requested, to the applicant at the address shown in his application for such examination. The applicant shall not be deemed to have been notified until the return receipt shall have been notified until the return receipt shall have been delivered to the Secretary of State by the postal authorities.

(3) If the report approves the system, the Secretary of State shall mail a copy of said report to each Election Administrator of the State of Montana. Such mailing shall be by first class mail. Such report shall be mailed no later than five days after receipt of the return receipt from the applicant under Rule VI(2) of these Rules.

RULE VII APPEAL FROM DISAPPROVAL (1) If upon examination any system shall have been disapproved by the Secretary of State under these Rules, the applicant may appeal therefrom by requesting reconsideration of the system so disapproved, under the following conditions.

(a) Such request for reconsideration shall be made within sixty days after applicant has been notified of the disapproval of the system presented for examination.

(b) Such request shall be in writing.

(c) Such request shall be limited to the grounds of disapproval as stated in the notification of the Secretary of State. The discovery or further explanation of advantages of the system not pertinent to the grounds upon which the system was disapproved shall not constitute an adequate cause for reconsideration.

(2) If the Secretary of State approves such request for reconsideration, he shall notify the applicant therefor in writing, and shall state the time and place fixed for re-examination of the system, if, in his opinion, re-examination is required. If re-examination is not required, he shall so state, and the matter of reconsideration may be consummated by mail, or by a hearing to be held at such time and place as the Secretary of State may fix. If a hearing is held, the Secretary of State shall make a full report of the same, shall file the same in his office and transmit a copy thereof to the applicant at the address stated in his application for reconsideration.

(3) If such re-examination, correspondence or hearing results in the approval of a system, the Secretary of State shall proceed to give notice of such approval in the manner provided in Rule VI of these Rules.

RULE VIII WAIVER OF CONDITIONS (1) The Secretary of State may waive the ten-day notice of time and place of examination of a system under Rule I(7) of these Rules, may vary the time and place of examination fixed by Rules I(4) and I(5), and may waive any informality in the form of application or procedure followed in examination, if, in his opinion, such informality does not substantially affect the validity of his conclusions with respect to the system examined.

RULE IX EXPERIMENTAL USE OF VOTING MACHINES OR DEVICES (1) The governing body of a county may provide for the experimental use of an approved voting machine or device at an election as provided in Section 13-17-105, MCA.

(2) After the experimental use of a voting machine or device that has been approved by the Secretary of State, the manufacturer of the machine or device shall submit a complete report of the election and shall cause the election administrator to endorse thereon his approval of the substantial accuracy of the report. Such report shall include the following information but shall not be limited thereto.

(a) A description of the system used.
(b) The number and location of each system or component.
(c) A statement of the number of votes cast.
(d) A statement of any difficulty experienced by voters or tabulating officials in using the system.
(e) A statement of the length of time required for a final tabulation of the votes cast on the system.
(f) A statement of any other facts pertinent to the use of such system.
(3) The Secretary of State shall file such report in his office, and shall give consideration to the same in any subsequent examination of the system so used.

RULE XI EXTENSION OF PREVIOUS APPROVAL OF VOTING MACHINES OR DEVICES (1) Any system having been approved under rules previously promulgated by the Board of Election Devices or approved by the Secretary of State under prior citations of law shall continue to have approval under the application of these rules without re-examination.
(2) These rules are proposed to provide a means of examination of voting machines or devices resulting in the approval or disapproval of their use in the State of Montana.
(3) Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Leonard C. Larson, Room 202, Capitol Building, Helena, Montana 59601, no later than December 13, 1979.
(4) The authority and implementing section is based on Section 13-17-107(1), MCA.

Dated this 6th day of November, 1979

Frank Murray

FRANK MURRAY
Secretary of State

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

In the matter of the amendment of Rule 46-2.18(34)-S18170 (46.7.1302) pertaining to state economic need policies.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.18(34)-S18170 (46.7.1302). NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 17, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.18(34)-S18170 (46.7.1302) pertaining to state economic need policies.

2. The Department proposes to amend the rule as follows:

46-2.18(34)-S18170 (46.7.1302) STATE ECONOMIC NEED POLICIES ~~(1) The Visual Services Division will provide all services without conditioning them on an economic need test. All services will be provided on the basis of a "Statement of Understanding" which is agreed upon by the client and the Agency.~~

(1) The Visual Services Division will establish economic need criteria to determine the portion of service cost if any, to be paid by the client. Economic need will not be applied when determining eligibility; however, the purchase of certain services by the Division will be based upon economic need.

(a) Economic need criteria will be designed to insure that all available assistance and contributions from the client, his family or interested organizations will be utilized before spending State/Federal funds for services.

(b) Economic need criteria will apply to the following services:

(i) Transportation (other than for diagnostic reasons.)
(ii) Training books and materials.
(iii) Maintenance (other than for diagnostic reasons.)
(iv) Tools, equipment, initial stocks and supplies (including livestock) and capital advances.
(v) Physical and/or mental restoration services.
(vi) Services to family members.
(vii) Occupational and business licenses.
(viii) Telecommunication, sensory and other technological aids and devices.
(ix) Other goods, and services.

3. The rule needs to be amended as a state law, Section 53-7-302 MCA, requires an economic need for certain services as outlined in the above rule.

4. Interested parties may submit their data, views, and arguments concerning the proposed amendment to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O Box 4210, Helena, MT 59601 no later than December 14, 1979.

5. The authority of this agency to amend the proposed rule is based on Section 53-7-102 MCA. The implementing authority is based on Section 53-7-102 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 22, 1979.

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

In the matter of the adoption of rules establishing guidelines and requirements pertinent for the administration of the developmental disabilities comprehensive community service program and the repeal of Rules 46-2.22(1)-S2200, 46-2.22(1)-S2210, 46-2.22(1)-S2220, 46-2.22(1)-S2230, 46-2.22(1)-S2250, 46-2.22(1)-S2260, 46-2.22(1)-S2270, and 46-2.22(1)-S2280	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES FOR THE ADMINISTRATION OF DEVELOPMENTAL DISABILITIES COMPREHENSIVE COMMUNITY SERVICE PROGRAM and REPEAL OF RULES 46-2.22(1)-S2200 through S2230 and S2250 through S2280

TO: All Interested Persons

1. On December 6, 1979, at 9:00 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the adoption of rules pertaining to establishing guidelines and requirements pertinent for the administration of developmental disabilities comprehensive community service program and the repeal of Rules 46-2.22(1)-S2200, 46-2.22(1)-S2210, 46-2.22(1)-S2220, 46-2.22(1)-S2230, 46-2.22(1)-S2250, 46-2.22(1)-S2260, 46-2.22(1)-S2270 and 46-2.22(1)-S2280.

2. The rules proposed to be repealed can be found on pages 46-164.2 through 46-164.9 of the Administrative Rules of Montana.

3. The proposed rules to be adopted provide as follows:

RULE I PURPOSE OF THE DEVELOPMENTAL DISABILITIES DIVISION The purpose of the developmental disabilities division is to assure the provision of quality comprehensive community services to developmentally disabled citizens in the least restrictive environment which promotes the principle of normalization.

RULE II DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Division" means the developmental disabilities division of the department of social and rehabilitation services.

(2) "Client" means a person with a developmental disability who is enrolled in a provider service program.

(3) "Provider" means any person or entity furnishing services to persons with developmental disabilities under a contractual agreement with the department through the developmental disabilities division.

RULE III ELIGIBILITY REQUIREMENTS (1) Eligibility for diagnostic and evaluation services, family training and support services, and other services for developmentally disabled persons shall be determined as follows:

(a) Any person suspected of having a developmental disability is eligible for diagnostic and evaluation services. Eligibility will be determined by the diagnostic and evaluation service agency upon application for services to the agency.

(b) Family members are eligible for family training and support services if a child residing in the family unit is developmentally disabled under the terms of Section 53-20-202(3) MCA, or is five (5) years of age or younger and is at risk for developmental delays. Eligibility for family training and support services will be determined by the provider upon application for services to the provider.

(c) Any person who is developmentally disabled under the terms of Section 53-20-202(3) MCA is eligible for such other services as may be provided by or funded through the division. Eligibility will be determined according to procedures established by the social service bureau, community services division of the department.

(2) Persons may contact the administrator, developmental disabilities division, P. O. Box 4210, 111 Sanders, Helena, MT 59601 for information about available services and location of services.

RULE IV EVALUATION SERVICES (1) The division shall provide for the evaluation of any person eligible for diagnostic and evaluation services either through services funded by the department or by referral to another agency.

(2) Within thirty (30) days of enrollment in a provider service program, the provider shall perform a comprehensive skill assessment for each person enrolled in the program. Each assessment shall be reviewed semi-annually by the provider. Results of the assessment shall be provided to the client's Individual Habilitation Planning Team.

RULE V CONFIDENTIALITY OF INFORMATION

(1) Confidential information, for purposes of this chapter, includes the following information about any applicant or client:

(a) name and address;

(b) the amount or type of services provided;

(c) information related to the social and economic conditions or circumstances;

(d) agency evaluation of information;

(e) medical data, including diagnosis, treatment, and past history of disease or disability;

(f) educational, training, habilitation or any similar data;

(g) any of the above information pertaining to the immediate family members.

(2) The department and the provider shall not disclose confidential information concerning any applicant or client except under the following circumstances:

(a) Information about an applicant or client may be released to department staff and providers who assist in or participate in the provision of services to the applicant or client.

(b) Information, as specified, may be disclosed upon the written consent of:

(i) the applicant or client if he is a legally competent adult; or

(ii) the client's parents, if legally responsible for the applicant or client, or the legal guardian of the applicant or client.

(c) Information may be disclosed if it is in summary, statistical, or any other form which does not identify and cannot be used to identify any applicant or client.

(d) Information may be disclosed pursuant to a court order issued by a court of competent jurisdiction, to the extent required by the court order.

(e) Information may be disclosed to the extent required to take immediate life-saving measures.

RULE VI CLIENT GRIEVANCE PROCEDURE (1) A provider shall maintain a written grievance procedure by which a client may file a complaint. A current copy of such procedure must be maintained on file with the department.

(2) Upon entry into a program and at least every six months thereafter, a client must be advised by the provider of the right to present grievances. The provider shall assist clients, as may be necessary, in utilizing the grievance procedure.

(3) If the outcome of the grievance procedure is adverse to a client, the provider shall notify the person of his or her right to appeal to the department under the department's fair hearing procedure.

RULE VII SERVICE PROGRAM FUNDING (1) All developmental disabilities service contracts funded through the division which exceed $10,000 in amount shall be formally advertised by the division. Any person or entity who intends to request funds for the provision of services may respond to the formal advertisement or may at any time write a letter of intent to the division, 111 Sanders, P. O. Box 4210, Helena, MT 59601. The letter of intent shall include:

(a) type of service to be provided;
(b) population to be served;
(c) geographical area to be served; and
(d) service initiation date.

(2) Within thirty (30) days of receipt of a letter of intent the division will place the applicant's name on a "Request for Service Funding List" and so notify the applicant. Persons or entities on the list will be notified when funds are available for service funding in the geographical area and service type designated.

(3) Completion of an application form or application form update and a project proposal will be required prior to the selection of projects. The selection process may include a regional review.

(4) No project funds will be awarded without a formal agreement between provider and department.

RULE VIII DIVISION QUARTERLY REPORT (1) The department shall provide to the developmental disabilities planning and advisory council a written quarterly report within 45 days following the last day of each fiscal quarter. This report shall contain:

(a) total developmental disabilities division budget;
(b) administrative operating budget;
(c) training budget;
(d) service contract and grant budget;
(e) total number of individuals receiving services;
(f) types and number of services;
(g) number of clients in each type of service;
(h) budget per service;
(i) source of funding per type of service;
(j) service goals and objectives; and
(k) service priorities.

(2) Copies of quarterly reports can be obtained upon request to the developmental disabilities division, P. O. Box 4210, 111 Sanders, Helena, MT 59601.

RULE IX PREPARATION OF MONTANA DEVELOPMENTAL DISABILITIES STATE PLAN (1) The department and the developmental disabilities planning and advisory council shall jointly prepare an annual comprehensive state plan for the initiation and maintenance of developmental disabilities services in the state.

(2) No later than March 30 preceding the federal fiscal year to which the state plan applies, the planning and advisory council will provide to the department information gathered from other public and private agencies relative to the following matters:

(a) state goals and objectives for developmental disabilities services;

(b) service needs and service gaps;
(c) service priorities; and
(d) interagency responsibilities for service delivery.
(3) The state plan must be approved by the council and by the director of the department.

4. The Department proposes to adopt the new rules relative to the administration of developmental disabilities community services. These rules set forth procedures for determining eligibility for developmental disabilities services; provide for the evaluation of persons suspected of having developmental disabilities; provide for the protection of certain confidential information; establish the requirement that providers maintain client grievance procedures; specify procedures by which prospective providers may apply for funds to provide services; and set forth other requirements and procedures as are necessary for the administration of developmental disabilities community services.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than December 17, 1979.

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

7. The authority of the agency to make the proposed rules is based upon Sections 53-20-204, 53-20-305, and 53-20-203 MCA. The implementing authority is Sections 53-20-305, 53-20-204, 53-20-205, 53-20-209, and 53-20-203 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

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

In the matter of the adoption of a rule pertaining to developmental disabilities, regional council and the repeal of Rule 46-2.22(1)-S2240	) NOTICE OF PUBLIC) HEARING FOR ADOPTION) OF A RULE PERTAINING) TO DEVELOPMENTAL) DISABILITIES,) REGIONAL COUNCIL and) REPEAL OF RULE 46-) 2.22(1)-S2240

TO: All Interested Persons

1. On December 6, 1979, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the adoption of a rule pertaining to developmental disabilities, regional council and the repeal of Rule 46-2.22 (1)-S2240.

2. The rule proposed to be repealed can be found on page 46-164.5 of the Administrative Rules of Montana.

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

RULE I REGIONAL COUNCILS (1) The director of the department shall recognize a petition by a citizens' organization for a developmental disabilities regional council under the procedures set forth herein. The petition shall be signed by a majority of the proposed members and shall provide:

(a) that the proposed council has not more than twenty (20) members;

(b) the names and addresses of each proposed council member;

(c) that the citizens' organization is broadly representative of the region and at least one-third (1/3) of the council's members are consumers or representative of consumers or consumer organizations in the discipline of developmental disabilities;

(d) that no providers, employees of providers, or members of governing boards of providers, or employees of the department or other persons whose membership on the council would cause a conflict of interest as determined by the council, are voting members of the council, except that a proposed council may designate no more than one-fourth (¼) of its total membership as nonvoting members;

(e) that the citizens' organization held at least three (3) public meetings in different areas of the region and that the public was encouraged to attend and participate in the formation of a regional council;

(f) that the public was given adequate notice of the meetings by means of local news media such as radio, newspapers and television throughout the region;

(g) that the organization has compiled by-laws for the proposed council; and

(h) that a recognized regional council for developmental disabilities does not exist for that region.

(2) A citizens' organization shall submit its petition to the director, department of social and rehabilitation services, P.O. Box 4210, Helena, MT 59601. The director shall notify the citizens' organization, in writing, no later than thirty (30) days after receipt of the petition whether the citizens' organization is approved as a regional council for developmental disabilities.

(3) Citizens' organizations approved by the department as regional councils prior to December 1, 1979, shall be treated as if approved in accordance with the provisions of this section.

(4) Regional councils shall file with the director of the department no later than October 1 of each year, current copies of council by-laws and council membership lists. The council membership list shall include sufficient information about council members to verify that the council is constituted in accordance with the laws of the state and this chapter provided, however, that any person who is a member of a regional council on January 1, 1980, may complete his or her term. Notice of approval or non-approval of by-laws and membership will be sent by the director no later than November 1. Any regional council determined by the director not to be operating in accordance with the provisions of state law or this chapter will be provided no less than ninety (90) days to correct such situation.

(5) Regional council by-laws. A regional council shall adopt by-laws which shall set forth:

(a) a stated purpose;

(b) the council duties, consistent with law;

(c) that membership on the council, except for vacancies occurring for any reason during a member's term, will be determined by election held at a public meeting which has been advertised in the news media throughout the region for a set number of days, and for which a set number of days' notice has been given; and which persons present are eligible to vote in such elections;

(d) that providers, employees of providers, members of governing boards of providers, employees of the department and such other persons determined by the council to be in conflict of interest situations, shall be nonvoting members of the council, except that no more than one-fourth (¼) of the total

membership of the council shall be nonvoting;

(e) provisions governing terms for members;

(f) provisions for filling vacancies created on the council during members' regular terms;

(g) provisions for electing officers for the council, for terms of office for officers, and for the filling of vacancies created during terms of office;

(h) that a quorum shall be at least a majority of the voting membership of the council, including alternates present to represent absent members;

(i) that the council will conduct regular meetings at least once during each calendar quarter, that records shall be kept of activities of the council and the means by which the public has access to the records;

(j) that if a committee is created, the purpose and function of that committee; and

(k) provisions for amending the by-laws.

(6) Regional councils shall:

(a) make an annual written review of needs within the region, including a list of priorities according to the findings of the review, and provide a copy of the review to the department and the developmental disabilities planning and advisory council by December 1 of each year;

(b) develop an annual plan for a system of community-based services for the developmentally disabled within the region and provide a copy of the plan to the department and the planning and advisory council by March 1 of each year preceding the federal fiscal year to which the plan applies;

(c) make an annual written evaluation of services presently provided within the region and provide a copy of the evaluation to the department and the planning and advisory council by May 1 of each year;

(d) provide two names for regional representatives to the planning and advisory council as requested by the council; and

(e) inform the department of changes in officers, members and alternates of the regional council, or of changes in the by-laws.

(7) The department shall employ a regional supervisor for each region to provide technical and administrative assistance to the regional council in:

(a) preparing a review and evaluation of needs and services;

(b) advising the department on programs for services;

(c) developing a plan for the developmentally disabled within the region, and to provide such additional assistance as may be assigned by the division administrator.

4. The Department proposes to adopt a new rule in order to clarify regional council approval procedures and by-law and membership requirements; to establish time guidelines for the completion of certain council responsibilities; and to provide for state personnel to assist regional councils.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than December 17, 1979.

6. The Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, 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 upon Section 53-20-207 MCA. The implementing authority is Sections 53-20-207 and 53-20-203 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

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

In the matter of the adoption of a rule pertaining to individual habilitation plans for persons with developmental disabilities	)	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE PERTAINING TO INDIVIDUAL HABILITATION PLANS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

TO: All Interested Persons

1. On December 6, 1979, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the adoption of a rule pertaining to Individual Habilitation Plans for persons with developmental disabilities.

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

RULE I INDIVIDUAL HABILITATION PLANS (1) An Individual Habilitation Plan is a written plan of intervention and action developed by a team of persons on the basis of a skill assessment and determination of the status and needs of a client. The Individual Habilitation Plan ensures that the provision of services will be systematic and that interventions are designed to enhance the development of the client.

(2) Each client is entitled to an Individual Habilitation Plan. Unless otherwise specified by provider agreement, the Individual Habilitation Plan shall be developed within 30 calendar days of the client's entry into a service program and be formally reviewed and revised at intervals not to exceed six months from the initial or previously reviewed Individual Habilitation Plan.

(3) Each Individual Habilitation Plan shall be developed by an Individual Habilitation Planning Team. The Individual Habilitation Planning Team members are:

(a) the client or the client's advocate, if one exists, or both of them, unless such participation is unobtainable and is so documented in writing. An advocate is a person who represents the interests and rights of a client as if they were the person's own, is not an employee of any agency directly providing services to the client and who is acknowledged by the client as his or her advocate at the time of the Individual Habilitation Plan meeting. If both a client and an advocate participate on an Individual Habilitation Planning Team, the advocate's position must be consistent with the client's expressed interests;

(b) the client's parents, if legally responsible for the client, or the client's legal guardian;

(c) the client's case manager;

(d) one person who works directly with the client from each service program provided to the client;

(e) the professional person from the institution of origin if the client has not yet been formally discharged from that institution; and

(f) staff of the division whenever possible.

(4) Any family member or relation may attend an Individual Habilitation Plan meeting.

(5) Psychologists, medical personnel and other consultants may attend the Individual Habilitation Plan meeting upon any team member's request.

(6) Each Individual Habilitation Plan shall include at least the following:

(a) the goals toward which the interventions outlined in the Individual Habilitation Plan will be directed;

(b) the pertinent results of assessments, both formal and informal, which outline the client's strengths and behavior/skill deficits;

(c) specific objectives, stated separately and in behavioral terms, which specify single behavioral outcomes, and reflect the client's needs as identified by assessment data and the goals established for the client. Components of objectives are:

(i) a statement of the conditions or setting in which the behavior is to occur;

(ii) an objective, measurable description of the behavior; and

(iii) a statement of the acceptable level of performance.

(d) names of persons, and the agencies, programs or services they represent, who have been assigned responsibility for implementation of the objective;

(e) the date by which each person is to begin implementing programs for each objective assigned by the Individual Habilitation Planning Team;

(f) projected date by which the client is expected to have met each objective;

(g) documentation of the barriers or conditions responsible for each client need which will not be addressed or attempted to be met before the next Individual Habilitation Plan meeting;

(h) a summary of the client's medical and dental status, including the physicians' names, dates and results of the client's most recent health examinations, a list of and rationale for any prescribed medications, current method of administration, and any medical goals and objectives relating to the client's medical status;

(i) administrative goals and objectives, including initiation and completion dates;

(j) names, program affiliations and signatures of each person accepting responsibility for a role, task or objective assigned to him or her by the Individual Habilitation Planning Team; and

(k) names and signatures of all persons who have participated in developing the Individual Habilitation Plan (including the client, unless the client's unwillingness to participate is documented) which will verify participation, agreement with the Individual Habilitation Plan, and acknowledgement of the confidential nature of the information presented and discussed.

(7) The Individual Habilitation Planning Team shall designate a member or members to review the Individual Habilitation Plan and resulting Individual Program Plans (written strategy for meeting an objective) on at least a monthly basis for implementation and continued appropriateness. This review shall document:

(a) progress data recorded in behavioral terms at least as often as the intervals designated by the Individual Habilitation Planning Team; and

(b) problems and changes in a client's status warranting review of the Individual Habilitation Plan by the Individual Habilitation Planning Team. The review information will be sent to the case manager and other interested Individual Habilitation Planning Team members every month or as designated by the Individual Habilitation Plan Team.

(8) The Individual Habilitation Plan Team shall meet at least every six months to formally review the goals and objectives established at the previous Individual Habilitation Plan meeting. In reviewing the previous Individual Habilitation Plan, the Individual Habilitation Planning Team shall:

(a) review progress data which has been collected on the client's response to each objective and Individual Program Plan assigned at the last Individual Habilitation Plan;

(b) modify the goals and objectives as necessary and suggest changes in ongoing Individual Program Plans;

(c) determine further services and programs that are needed as a result of current assessments or assessment updates completed prior to the meeting; and

(d) consider the advisability of continued current service provision and alternative placements or services.

(9) The case manager, or other person, assigned by the Individual Habilitation Planning Team shall provide the Individual Habilitation Plan to the client; to the client's family, when appropriate; and to each member of the Individual Habilitation Planning Team. The case manager or other designated person shall interpret the Individual Habilitation Plan to the client.

(10) The duties of the case manager in the Individual Habilitation Plan process are:

(a) to schedule Individual Habilitation Plan meetings whenever Individual Habilitation Plan revision is deemed necessary by any Individual Habilitation Planning Team member but at least every six months;

(b) to notify in writing (except for meetings called in emergency situations) all Individual Habilitation Planning Team members and any other appropriate persons of the date, time and place of the Individual Habilitation Plan meetings at least two weeks prior to the scheduled Individual Habilitation Plan meeting;

(c) to explain the purpose of, obtain input from, and otherwise prepare the client for upcoming Individual Habilitation Plan meetings;

(d) to record the results of the Individual Habilitation Plan meetings, interpret them to the client and disseminate copies to all Individual Habilitation Team members within two weeks of the Individual Habilitation Plan meeting; and

(e) to ensure that the Individual Habilitation Planning Team members assigned the tasks of monthly reviews document such reviews in the client's Individual Habilitation Plan file.

(11) The decision-making process for development of an Individual Habilitation Plan shall be as follows:

(a) decisions shall be made by consensus of Individual Habilitation Planning Team members;

(b) if a consensus cannot be reached, the Individual Habilitation Planning Team shall adjourn for no more than five (5) working days, to allow time for a resolution of the conflict;

(c) at the next Individual Habilitation Plan meeting, if a consensus still has not been reached, the unresolved issues shall be referred to the regional supervisor and the social services district supervisor who shall meet within ten (10) working days to jointly make a decision. Individual Habilitation Planning Team members may attend to document the differing points of view;

(d) if the regional supervisor and the social services district supervisor cannot reach a decision, or if any Individual Habilitation Planning Team member is dissatisfied with the decision, an appeal to the division administrator and social services bureau chief may be made who shall meet within ten (10) working days to jointly make a decision;

(e) further appeal may be made to the director of the department, whose decision shall be final.

(12) At each Individual Habilitation Planning Team meeting, the case manager shall review the requirements of confidentiality. Each non-member must sign a statement to the effect that

he or she is aware of the confidential nature of the client information and will treat such information in accordance with the department's policy on confidentiality.

3. The Department proposes to adopt a new rule in order to establish the requirement that habilitation plans be developed for all developmentally disabled persons enrolled in programs funded through the Developmental Disabilities Division and to set forth necessary procedures. This rule is made necessary by 1979 legislation mandating that habilitation plans be developed, implemented and maintained for all developmentally disabled persons served through a community-based program funded by the state.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than December 17, 1979.

5. The Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed rule is based upon Section 53-20-204 MCA. The implementing authority is Section 53-20-203 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

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

In the matter of the amendment of Rule 46-2.6(2)-S6181(46.5.744) pertaining to child care agencies, payments.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46-2.6(2)-S6181 PERTAINING TO CHILD CARE AGENICES, PAYMENTS

TO: All Interested Persons

1. On December 7, 1979, at 11:00 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the amendment of Rule 46-2.6(2)-S6181 pertaining to payments, child care agencies.

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

RULE I 46-2.6(2)-S6181 (46.5.744) CHILD CARE AGENCIES, PAYMENTS The department shall make payments to child care agencies for care of children for whom the department is responsible. The amount of the payment shall be based upon a rate system of reasonable costs developed by the department ~~and~~ which will include the following requirements:

(1) Child care agencies must be licensed by the department to receive payments for care from the department. The child care agency has the responsibility to apply for financial participation by the department. The department will establish annual deadlines for information from the child care agencies in order to establish monthly rates. The financial information to be provided by the child care agencies must be reported according to guidelines set by the department and shall include:

(a) a report of all expenditures for the operation of the child care agency including items which may be unallowable for reimbursement from the department;

(b) a budget narrative explaining in detail the report of expenditures;

(c) a report of all income to the child care agency by amount, source, and purpose, excluding names of private donors;

(d) a statistical report including the child care agency's average length of stay over the previous year, average daily population, the breakdown of financial responsibility by agency by number of youth per day, and any anticipated changes of these statistics above for the next 12-month period; and

(e) a detailed description of the treatment program including functional job descriptions of all child care agency

staff which contribute to the treatment program.

(2) The rate system shall include levels of care to be provided by the child care agencies and ~~categories~~ descriptions of care needed by the children ~~with varying problems.~~ in residence. Services required by the various levels have the following definitions:

(a) "Child/staff ratio" means the number of children in residence (including staff's own children) per staff. This includes treatment staff or staff responsible for supervision of the residents. Administrative, clerical, maintenance, and food preparation staff are to be excluded.

(b) "Program management consultation" means consultation to the program staff regarding direction and management of the total treatment and care program, and does not include staffings and consultation on specific youth. This service is to be provided a masters level professional with academic background in the behaviorial sciences. Staff with bachelor degrees and substantial experience may also be considered, but must be approved by the bureau.

(c) "Professional staffing/consultation" means consultation with program staff on individual youth in relation to the individual treatment/service plan or the total program environment. These services are to be provided by a professional with the minimum of a masters degree in behavioral sciences. Any exception must be approved by the bureau.

(d) "Educational/employment" means activities with residents and community resources regarding the educational and/or employment portion of the residents' plan for services.

(e) "Community intervention" means advocacy for the youth in the local community and contacts with the referring agencies on residents' progress and reaction to treatment. Staff must have skills necessary to carry out responsibilities and promote the residents and program with professionalism.

(f) "Professional counseling" means individual and group therapy and must be provided by professionals with a minimum of a masters level in psychology, social work, counseling or by a licensed psychiatrist.

~~(3) The Department shall establish supplemental licensing standards which relate to each level of care within the rate system. Each child care agency shall be responsible to apply for the appropriate level of care and to provide the Department with the necessary information to establish and monitor compliance with the licensing standards.~~

(3) The levels of care are as follows:

(a) Level I-Minimal:

(i) Goal: To provide socialization and character building for those without appropriate homes; a place to live until emancipation; independence preparation.

(ii) Definition of services: Minimal care and maintenance and shelter, child/staff ratio of 12 to 1, and use

of all community resources.

(b) Level II - Basic:

(i) Goal: settle youth down, stabilize and modify inappropriate behavior; prepare youth for more permanent living situation.

(ii) Definition of services: supervision; child/staff ratio of 8 to 1; individualized, formal treatment planning with the placing agency; monitoring of the youth's progress through agency contact; program management consultation (1 hour per month per youth); recreational program; community intervention (1 hour per month per youth); and use of community resources to fulfill the treatment plan.

(c) Level III - Structured:

(i) Goal: development of internal controls, prevention of more serious negative behavior, interpret and normalize corrective emotional experiences.

(ii) Definition of services: intensive supervision; child/staff ratio of 8 to 1; individualized treatment planning by child care agency; structured behavior program, professional group life staff; community intervention (2 hours per month per youth); professional staffing/consultation (1 hour per month per youth); professional counseling (4 hours per month per youth); educational/employment (6 hours per month per youth); tutorial program; planned recreation program as part of the treatment program; utilization of community resources to fulfill the treatment plans.

(d) Level IV - Intermediate:

(i) Goal: provide 24-hour awake supervision, correct negative behavior, build appropriate social and behavior skills in order to enable youth to return to less restrictive environment, establish emotional stability, and provide a community-based alternative to secure institutionalization of youth who have substantially disrupted other community-based group facilities.

(ii) Definition of service: secure supervision; child/staff ratio of 4 to 1; individualized treatment and behavioral program; alternative program to public school; program management consultation (1.5 hours per month per youth); professional staffing/consultation (3 hours per month per youth); professional counseling (6 hours per month per youth); educational/employment (6 hours per month per youth); community intervention (6 hours per month per youth); 24-hour awake supervision; tutorial program; planned recreation program as part of treatment; utilization of community resources.

(e) Level V - Intensive:

(i) Goal: provide residential treatment services designed to treat the individual needs with the ultimate purpose of returning the youth to society; rehabilitate medically, psychologically, behaviorially, and educationally handicapped youth and their families.

(ii) Definition of services: 24-hour awake supervision; child/staff ratio of 4 to1; available security; individualized assessment, treatment and behavioral program, availability of self-contained classroom school within child care agency; program management consultation (115 hours per month per youth); professional staffing/consultation (4 hours per month per youth); professional counseling and therapy (8 hours per month per youth); psychologist for testing, evaluation, assessment (1 hour per month per youth); medical supervision by psychiatrist or psychiatric nurse (1 hour per month per youth); tutorial services; wide range of treatment, recreation therapy; milieu therapy; utilization of appropriate community resources.

(f) Level VI - Secure Intensive: This level would have the same goals and definitions of service as level V - Intensive with the addition of a secure facility.

(g) Child care agencies which provide short-term, temporary care in general will not be required to adhere to the above six levels. These facilities will be reimbursed for only those services which are contracted for by the bureau and at a rate established by the bureau.

(4) The rate system will include payment for the ~~provision of board, room, supervision, school expenses, and miscellaneous care items for the children in residence,~~ following categories:

(a) Basic child care costs: This category includes food and food related costs, children's allowances, school supplies and tuition charges, personal hygiene costs, recreational expenditures (including equipment), miscellaneous household supplies, and transportation costs for children and program operation.

(i) Food costs include groceries, food preparation, food purchasing and processing and kitchen maintenance for children and supervision staff.

(ii) Allowance includes youth's personal allowance.

(iii) Clothing includes youth's personal wardrobe; initial purchase, replacement, and maintenance such as dry cleaning, shoe repair, etc.

(iv) Educational should range from $3 to $7 per month per child; this cost seems to be so infrequent that this category can also cover the charge.

(v) Personal hygiene items include soaps, shampoos, toilet articles, haircuts, curlers, deodorants, and medicine chest supplies.

(vi) Recreational expenditures include equipment purchase and maintenance, activity charges such as admissions, lessons, memberships, and costs of activities for groups.

(vii) Miscellaneous household supplies include items for operation of the program and household not covered under Facility Maintenance or Food Preparation.

(viii) Transportation costs include transporting of

children to schools, to appointments for social and medical services, to and from home if agreed to by provider and agency, and program operation.

(b) Shelter Costs: This category includes costs for space, maintenance, insurance, telephone, and utilities for child maintenance, recreation, dining, counseling, treatment, program supervision, and administration of the facility. Attention homes are included with group homes because most Montana attention homes are housed in group home facilities.

(i) Space costs must not exceed $90 per month per youth and includes all areas for child maintenance, supervision, treatment and administration. Space costs do not include portions of the facility which are used for production of products sold or used in the facility.

(ii) Maintenance costs include expenditures related to replacement and maintenance of the building and grounds. Salaries of maintenance staff are also to be included in this category.

(iii) Insurance includes liability and fire insurance for the facility. Auto insurance may be included if the liability policies are all inclusive (otherwise, auto insurance is to be included under Transportation, CHILD CARE COSTS).

(iv) Telephone includes local service as well as long-distance service for the residents and program operation.

(v) Utilities include gas and electricity for heating and lighting, water, sewage, cable T.V., and garbage service (if not included in rent).

(vi) Supplemental Shelter Costs might include extra space to provide private rooms for treatment needs, play therapy quarters, specially equipped isolation rooms, et cetera. Coverage of supplemental shelter costs shall be contracted for by SRS and the provider. The maximum limit is $50.00 in addition to basic shelter costs.

(c) Supervision of children: This category covers costs of providing supervision of the youth in the facility. Salaries and benefits are to be included. If room and board is provided to child supervision staff, those costs can be included in Food, Child Care Costs, and Shelter, but must be specified.

(i) Supervision includes 24 hour presence of group life staff over the age of 21 who are qualified by experience, emotional maturity, the ability to present quality role-models and decision-making ability. Staff must be able to manage day-to-day activities of the residents and the operation of the facility. Contact with the agency worker supervising the placement of the residents is the responsibility of the group life staff. These staff must also be responsible to carry out the service plan of the placing agency including home visits, appointments with medical, psychological, and social service appointments for the residents. School attendance and

employment activities should also be monitored by the group life staff.

(ii) Basic Houseparent Model includes child supervision by group life staff who live in. The most common arrangement is that of married couples with or without children of their own. Group life staff under this model must provide awake supervision of residents for 16 hours per day (usually 7 a.m. to 11 p.m.). Night staff must be in residence, but may be sleeping. The minimum child/staff must be 8 to 1 and must include children of staff who live in residence.

(iii) Basic Shift Model includes group life staff who provide supervision of residents on an 8-hour shift basis. Night staff is provided by live-in staff who are usually sleeping at night, but available to the residence. Room and board is usually provided in exchange for such night supervision. The awake shifts usually cover the period from 7 a.m. to 11 p.m. The minimum child/staff ratio is 8 to 1. Children of staff should not be in residence in this model.

(iv) 24-Hour Awake Supervision with Child/Staff Ratio of 8 to 1 includes group life staff providing awake supervision of residents 24 hours per day. The reimbursement cost listed includes group life staff working 8 hour shifts. If live-in staff is utilized, reimbursement will be 40% less due to the provision of room and board. The minimum child/staff ratio is 8 to 1. Live-in staff's children must be counted when calculating the child/staff ratio.

(v) 24-Hour Awake Supervision with Child/Staff Ratio of 4 to 1 includes group life staff providing awake supervision of resdents 24 hours per day. The minimum coverage for 8 children under this model for periods during school weeks and/or when there is 4 or fewer residents in the facility is:

7 a.m. to 9 a.m.	2	group	life	staff
9 a.m. to 3 p.m.	1	group	life	staff
3 p.m. to 11 p.m.	2	group	life	staff
11 p.m. to 7 a.m.	1	group	life	staff

When all residents are in the facility, such as weekends, holidays, and during the summer, the minimum group life staff required is:

8 a.m. to 4 p.m.	2	group	life	staff
4 p.m. to 12 midnight	2	group	life	staff
12 midnight to 8 a.m.	1	group	life	staff

(d) Treatment; This category includes activities associated with a formal treatment program operated by the child care agency as well as coordination of community resources in relation to a treatment/service plan for each youth. The requirements are explained in detail in 46.5.744(2) and 46.5.744(3).

(e) Program management includes supervision of treatment and child supervision staff, development and maintenance of the treatment program, staff training, advocacy for youth and program, management and coordination of program with agencies and community.

~~(5) The payment structure for child care agencies will include a base rate and specific supplemental rates for each level of care as required by the licensing standards.~~ Cost items which cannot be directly identified with the care and maintenance of children receiving payment from the Department are unallowable to be included in the Department rate. The following is a list of common unallowable items and is not all-inclusive:

(a) interest on corporate loans, bad debts, capital expenditures

(b) fund raising; public relations; administrative salaries, clerical costs related to general administration

(c) expenses associated with buildings, equipment, and grounds not identified with the care of individual children

(d) attorney fees or retainers paid for corporate agency business, audit costs

(e) donations made by the institution as voluntary gifts or paybacks to parent organizations membership dues in local and national organizations

~~(6) The rate system will include incentives for child care agencies to obtain private funds for maintenance and development of the program. All income from public sources and the provision of "in-kind" goods or services through public sources shall be considered as a resource to the child care agency for the determination of the rate to be paid by the Department.~~

(6) The Bureau will develop guidelines for reasonable costs to be reimbursed according to categories described in 46.5.744(4). The Bureau will reimburse the child care agency costs for care up to the maximums set in the guidelines. Funds received by the child care agency for operation of the program will be considered a first resource to the child care agency and will therefore be deducted from the care costs before establishment of a monthly rate. A portion of the governmental funds may be set aside for administrative or other designated purpose. Such a portion shall be set by the Bureau. Private donations received for the operation of the program will also be deducted from the costs prior to establishment of a monthly rate. If the private donations are designated for purposes other than operations, such as building funds, special projects, administration or other unallowable costs, that income will not be used in the calculation of a monthly rate. An 80% of licensed capacity figure will be used for child care agencies which provide long-term care. A 75% of licensed capacity figure will be used for child care agencies which provide short-term care.

(average length of stay of less than 30 days per youth).

(7) ~~The rate system for child care agencies providing short-term care as defined by the Department may vary fromthe rate system for providers of long-term care for children.~~ Any child care agencies which receives payment for care of children from the Department must provide a copy of the annual audit to the Bureau annually. The Bureau has the right to inspect all of the child care agency's financial records at any time and may conduct an audit of all such records within 10 days of a notice of such intent. Denial of access to the Department or Bureau will result in immediate discontinuation of financial payments for care.

3. The rules respond to a demonstrated need for an equitable reimbursement system for child care agencies and group homes by detailing levels of care and services to be provided to children in residence.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than December 17, 1979.

5. The Office of Legal Affairs of the Department of Social and Rehabiltiation Services, P. O. Box 4210, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed rule is based upon Sections 53-4-111, MCA (71-708 R.C.M.) and 53-4-212, MCA (71-503 R.C.M.) authorize the department to adopt the proposed rules. The proposed rules implement sections 53-2-201(1)(a) and (b), MCA (71-210, R.C.M. 1947) and 53-4-211, MCA (71-503(a), R.C.M. 1947).

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

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

In the matter of the adoption of a rule pertaining to eligibility for adult protective services and the amendment of Rule 46-2.6(6)-S6517C pertaining to procedures to obtain adult protective services	) NOTICE OF PUBLIC) HEARING FOR ADOPTION) OF A RULE PERTAINING) TO ELIGIBILITY FOR) ADULT PROTECTIVE) SERVICES AND THE) AMENDMENT OF RULE) 46-2.6(6)-S6517C) PERTAINING TO) PROCEDURES TO OBTAIN) ADULT PROTECTIVE) SERVICES

TO: All Interested Persons

1. On December 7, 1979, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the adoption of a rule pertaining to eligibility for adult protective services and the amendment of Rule 46-2.6(6)-S6517C pertaining to procedures to obtain adult protective services.

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

RULE I ELIGIBILITY FOR ADULT PROTECTIVE SERVICES

(1) Any person who:

(a) is aged or disabled as defined in rule 46-2.6(6)-S6517A; and

(b) matches the Title XX eligibility requirements as identified by the bureau; and

(c) makes application in a manner and on a form prescribed by the bureau; and

(d) is determined eligible by county social services according to criteria established by the bureau and set forth in the bureau manual is able to receive protective services as defined in rule 46-2.6(6)-S6517B.

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

46-2.6(6)-S6517C PROCEDURES TO OBTAIN ADULT PROTECTIVE SERVICES ~~PROTECTIVE SERVICES FOR AGED PERSONS AND DISABLED ADULTS, PROCEDURE TO OBTAIN SERVICES~~

~~(1) The county department of public welfare shall receive and investigate requests for voluntary services from:~~

~~(a) aged persons or disabled adults;~~

~~(b) relatives or friends of such persons; or~~

~~(c) community agencies, resources or individuals such~~

~~as doctors, lawyers, clergymen, health departments, alcohol treatment centers, hospitals, homemakers or any other persons interested in the individual's welfare.~~

~~(2) The county department of social services shall make eligibility determinations using the criteria set out in the definitions of "aged person" or "disabled adult" in rule 46-2.6(6)-S6517A above.~~

~~(3) Upon request for non-voluntary services, the county social worker shall:~~

~~(a) investigate the situation to determine whether or not a petition for guardianship is necessary for the protection of the individual in question, and~~

~~(b) upon determination that guardianship proceedings are necessary, initiate through the county attorney a petition under Section 91A-5-311, R.C.M. 1947. Guardianship proceedings are contained in Title 91A, Chapter 5, Part 3, "Guardians of Incapacitated Persons."~~

(1) The county social services in which the applicant resides receives and investigates requests for protective services.

(2) Request for service is accepted from aged or disabled persons on their own behalf or from any relative or persons interested in the individual's welfare.

(3) Request may be written or oral, however, written request is preferred and on a form and in a manner prescribed by the bureau and available from the county social service.

(4) County social services determines eligibility using criteria established by the bureau.

(5) The social service worker determines eligibility in writing on a form and in a manner prescribed by the bureau prior to provision of service.

4. Because the Department has not previously provided by rule eligibility criteria for adult protective services, the Department is proposing a new rule to specify the criteria for eligibility.

Also, the Department is amending the rule pertaining to procedures for obtaining adult protective services in order to clarify the procedure and to eliminate unnecessary language.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than December 17, 1979.

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

7. The authority of the agency to make the proposed rules is based upon Section 53-5-205 MCA. The implementing authority is Section 53-5-203 through 53-5-205 MCA.

Keith L. Colo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of rules for the conduct of Vocational Education Programs, Particularly in Secondary Schools	))))))	NOTICE OF PROPOSED AMENDMENT OF RULES For Vocational Education Programs NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons:

1. On December 15, 1979, the Office of Public Instruction proposes to amend rule 48-2-1 which sets forth rules for conduct of Vocational Education Programs, particularly in secondary schools.

2. The proposed amendments modify present rules found on pages 1130 through 1143, issue No. 18, 1979 MAR. The amendments correct omissions and editorial mistakes.

The rules as proposed to be amended provide as follows:

48-2.26 (11)-S26141. (10.5.2201) GENERAL REQUIREMENTS.

(1) The program~~s~~ must have the primary objective of developing skills leading to employment as well as entry into advanced vocational training.

(2)-(18) Remain the same.

48-2.26 (11)-S26142. (10.5.2202) AGRICULTURE EDUCATION PROGRAMS.

(1) and (2) Remain the same.

(3) Future Farmers of America (FFA) must be conducted as part of the program, serving as an intracurricular activity. The teacher of vocational agriculture shall serve as the advisor to the local FFA chapter. All programs of secondary vocational agriculture/agribusiness must maintain a local FFA chapter in good standing with the state and national FFA organizations.

48-2.26 (11)-S26143. (10.5.2203) BUSINESS AND OFFICE EDUCATION PROGRAMS.

(1) Remains the same.

(2) Specific requirements: The total business program must include a series of courses from basic to advanced, which begins with such courses as typing, accounting, shorthand, basic business, and possibly business machines or other related courses. This series must lead to the integrated skills courses of clerical office practice, secretarial office practice and simulated/model office.

(a) Minimum minutes per week: 270. A two-hour block of time for the integrated skills course is encouraged.

(b) Maximum class size: Twenty students.

~~(b)~~ (c) Instructors shall be prepared as follows:

(i) The instructor must have a bachelor's degree in business and office education and shall have earned a minimum of fifteen quarter credits in the areas of philosophy of vocational education, administration of vocational education, cooperative coordination practices and procedures/methods courses in the area of certification.

(ii) The instructor shall have had at least 2,000 hours of work experience in the occupation or a combination of occupations related to a specific field in which that person is to teach.

48-2.26 (11)-S26144. (10.5.2204) DISTRIBUTIVE EDUCATION PROGRAMS.

(1) Remains the same.

(2) Specific requirements: Programs must be designed to prepare students in grades 11 and 12 for careers in marketing and distribution of goods.

(a) Duration of programs: one or two years. The final year must be strictly vocational in that it actually prepares students for their chosen careers in distributive education occupations.

(b) The program must consist of part-time employment and on-the-job training coordinated with classroom instruction and supervised by a distributive education ~~instruction~~ instructor. The program must offer ~~l~~laboratory ~~experience~~ instruction designed to provide a variety of experiences under close supervision . ~~a~~ A minimum of one hour of coordination time per day for every twenty (20) cooperative vocational education students is required.

(c) Maximum class size: Twenty five students.

~~(c)~~ (d) A distributive education coordinator shall have at least 2,000 hours recent work experience in the occupation or combination of ~~occupation~~ occupations related to the area of marketing and distribution.

In addition, the distributive education coordinator must have completed fifteen quarter credits of course work in the areas of principles, methods, organization, guidance, curriculum construction, and instructional materials in vocational education.

(e) Activities of the local Distributive Education Clubs of America (DECA) chapter shall be conducted as an integral part of the distributive education program.

48-2.26 (11)-S26145. (10.5.2205) HEALTH OCCUPATIONS PROGRAMS.

(1) Remains the same.

(2) Specific requirements~~:~~ are as follows:

(a) Duration of ~~program~~ programs: Secondary programs

shall provide two consecutive class periods daily for one or two years if specific skill training is involved in the program.

(b) Maximum class size: 25 students for exploratory classes and 20 in classes for specific skill training. Nurse aide programs involving supervised clinical experiences shall not accomodate more ~~that~~ than 15 students per class.

(c) Facilities and resources~~,~~ : Teaching materials shall be constantly updated to reflect the technological advances within health care and education.

(d) Instructors shall hold a class 4 teaching certificate endorsed in the appropriate health field.

48-2.26 (11)-S26146. (10.5.2206) TRADE AND INDUSTRIAL EDUCATION PROGRAMS.

(1) Remains the same.

(2) Specific requirements~~,~~ : Trade and industrial education in Montana secondary schools must be designed to prepare students in grades 11 and 12 to enter into industrial trade or service. Secondary programs are expected to provide students with approximately one-third ~~and~~ to one-half of the preparation needed at the journeyman level.

(a) Duration of ~~program~~ programs: Secondary programs must be designed as part of an overall industrial education sequence. The trade and industrial portion of the program is offered at grades 11 and 12 and must consist of both basic and advanced courses each a full year in length.

(b) Minutes per week: 270 for basic ~~laboratory~~ courses and 540 for advanced courses. Schools with modular schedules must arrange suitable combinations to provide an equal amount of time.

(c) Maximum class size for specific programs is:

(i)	Appliance Repair	20
(ii)	Auto Body	18
(iii)	Auto Mechanics	18
(iv)	Carpentry	16
(v)	Electricity/Electronics	20
(vi)	Drafting (General and Machine)	22
(vii)	Architectural Drafting	18
(viii)	Graphic Arts	20
(ix)	Metalworking	18
(x)	Welding	18
(xi)	Small Engine Repair	20

(d) Instructors must meet a five-year (10,000 hour) obligation, which should ensure a strong trade background. This may be satisfied by sufficient work experience augmented by educational course work or by a combination of work experience and college preparation. Instructors shall have had recent work experience directly related to the area being taught. The following are minimum considerations ~~for instructor~~:

(i) A graduate with a teaching degree in trade and

industrial education must have one year (2,000 hours) experience and hold a class 2 certificate endorsed in Trade and Industrial (65) and the appropriate field.

(ii) A non-degree man or woman or one with a degree in another field must have five years (10,000 hours) experience and hold a ~~minimum of a~~ Class ~~5~~ 4 teaching certificate.

(iii) Anyone not meeting these requirements may receive credit for other educational and practical experience. Evaluation will be made on an individual basis by the Division of Certification, Office of Public Instruction, in cooperation with the consultant for Trade and Industrial Education. In some cases work experience credit will be allowed for successful completion of an approved trade competency examination or other background contributing to trade competency.

(iv) A total of 15 quarter credits of vocational education professional course work is required. This may be earned by completing courses in the following subjects or prior-approved alternates:

(A) Job analysis
(B) Principles and/or philosophy of vocational education
(C) Teaching methods in vocational education (specific area being taught)
(D) Preparation of instructional materials
(E) Vocational-technical organization and management
(F) Vocational guidance

48-2.26 (11)-S26147. (10.5.2207) HOME ECONOMIC WAGE EARNING PROGRAMS.

(1) Remains the same.

(2) Specific requirements:

(a) Minutes per week: 270. Depending on the activities integrated into the course, longer time blocks may be desirable.

(b) Maximum class size: 25 students per instructor in wage-earning classes.

(c) Instructors shall have a bachelor's degree in home economics education plus one year of experience in directly-related work.

(d) Work experience, simulated or real, shall be an integral part of the program.

48-2.26 (11)-S26149a. (10.5.2210) COOPERATIVE VOCATIONAL EDUCATION PROGRAMS.

(1) Remains the same.

(2) Specific requirements~~-~~ : Programs must provide students with on-the-job experience and training along with vocational classroom instruction related to their occupational interests. A cooperative arrangement among the school, the employer and the student is therefore necessary. Students' classroom and on-the-job activities must be planned and supervised by the school and the employer to ensure that both activities contribute to the students' employability and ~~total----education~~.

(a) Student placement for the first year of operation must be a minimum of 50 percent of the students enrolled in a specific (cooperative) program. Placement in ~~successful~~ successive years of operation should reach a level of 75-80 percent.

(b) Forty cooperative students is the maximum per coordinator.

(c) Instructors shall be prepared and assigned as follows:

(i) A qualified teacher-coordinator must be responsible for the program.

(ii) The coordinator must be provided with coordination time over and above his or her regular preparation period(s). A minimum of one hour of coordination time per day must be allotted for every 20 cooperative students.

(iii) The coordinator shall be employed for an extended contract of at least 10 days while school is not in session to assist students in finding jobs, to develop training stations, etc.

(iv) The coordinator shall be prepared and assigned as follows:

(A) shall hold a valid Montana teaching certificate endorsed in the applicable vocational ~~are~~ area;

(B) shall have had at least one year of occupational experience in a related field.

(C) shall have completed as part of the professional teacher preparation requirements a course dealing with the administration and coordination of cooperative education.

(v) Budget items that may be considered as additional costs for funding purposes are as follows:

(A) Extended contract salrary - that time prior to and immediately following the school year which is used by the teacher-coordinator to prepare training stations, make home visitations, place students and evaluate the program.

(B) Coordination time during the school day - that time during the scool day which is used by the teacher to coordinate individual trainees' on-the-job activities. For example, if one-third of the teacher-coordinator's time during the day is devoted to on-the-job coordination, then one-third of his or here salary ~~must~~ may be considered an ~~official~~ additional cost item.

(C) Coordinator's travel expenses - those travel expenses incurred by the teacher in coordinating on-the-job activities of training.

(vi) The student-learner, during the training experience, shall be under the direct supervision of the designated on-the-job trainer, particularly when the work is in occupations classified as hazardous, or with machines or processes that are classified as hazardous.

(d) A signed training agreement must be entered into by the participating employer, educational agency and trainee.

(e) Students placed in cooperative training stations must receive at least the minimum wage.

(f) Sex equity requirements are as follows:

(i) An employer with whom a contract is made shall be an equal opportunity employer and should interview and place male and female students in work experience dependent on their interests and abilities rather than on cultural sex-stereotypes.

(ii) Female and male student-learners shall be paid on an "equal pay for equal work" basis within the same firm.

3. The rule is proposed to be amended due to inadvertant errors.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Jeff Wulf, Consultant for Industrial Education, Office of Public Instruction, State Capitol, Helena, MT 59601.

5. The authority of the department to make the proposed amendment is based on Sec. 20-3-105 and 20-3-106 MCA., IMP H.B. 634 Forty-sixth Legislative Session, 1979.

Georgia Rice

GEORGIA RICE, Superintendent
Office of Public Instruction

Certified to the Secretary of State November 6, 1979

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules: Rule I through XII, assigned Rule numbers 4.6.400 through 4.6.510.	)))))))	NOTICE OF THE ADOPTION OF RULES I THROUGH XII ASSIGNED RULE NUMBERS 4.6.400 THROUGH 4.6.510 ESTABLISHING PROCEDURES FOR APPLICATIONS FOR FUNDING RESEARCH, DEVELOPMENT, PRODUCTION AND MARKETING OF FUEL AND FOOD DERIVED FROM MONTANA WHEAT AND BARLEY

TO: All interested persons.

1. On August 30, 1979, the Montana Department of Agriculture published notice of a proposed adoption of rules, concerning establishing procedures for applications for funding research, development, production and marketing of fuel and food derived from Montana wheat and barley at page 861 of the 1979 Montana Administrative Register, issue number 16.

2. The agency has adopted the rules as follows:

RULE I PURPOSE OF RULES assigned rule number 4.6.400 is adopted as proposed.

RULE II DEFINITIONS assigned rule number 4.6.410 is adopted as proposed.

RULE III STATEMENT OF ADMINISTRATIVE POLICIES assigned rule number 4.6.420 is adopted as proposed.

RULE IV APPLICATIONS - GENERAL REQUIREMENTS assigned rule number 4.6.430 is adopted as proposed.

RULE V APPLICATION CONTENT assigned rule number 4.6.440 is adopted as proposed.

RULE VI APPLICATION SUBMITTAL DEADLINES assigned rule number 4.6.450 is adopted as proposed with the following change. Applications for fiscal 1980 funding shall be submitted by ~~September~~ November 30, 1979 and June 30th thereafter.

RULE VII APPLICATION EVALUATION assigned rule number 4.6.460 is adopted as proposed.

RULE VIII AWARDING GRANTS - CRITERIA assigned rule number 4.6.470 is adopted as proposed.

RULE IX CONDITIONS UNDER WHICH GRANTS MAY BE USED AND OTHER CONDITIONS assigned rule number 4.6.480 is adopted as proposed.

RULE X PAYMENT OF GRANTS assigned rule number 4.6.490 is adopted as proposed.

RULE XI PROJECT ADMINISTRATION assigned rule number 4.6.500 is adopted as proposed.

RULE XII CONFIDENTIALITY assigned rule number 4.6.510 is adopted as proposed.

3. No comments or testimony were received.

W. Gordon McOmber

W. Gordon McOmber, Director

Certified to the Secretary of State, October 22, 1979.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF AMENDMENT OF
ment of Rule 12-2.6(3)-S6170	)	RULE 12-2.6(3)-S6170
relating to bird art stamp	)	BIRD ART STAMP
contest rules	)	CONTEST RULES

TO: All Interested Persons:

1. On August 30, 1979, the Department of Fish, Wildlife, and Parks published notice of a proposed amendment of a rule relating to bird art stamp contest rules at page 879 of the 1979 Montana Administrative Register, issue No. 16.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The department amended the rule because the new license format requires it be in a strip form with dimensions of approximately 5" x 1/2", thus making it impossible to place the artwork on such a stamp. Under this amendment, the artwork stamp will be a separate item.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF AMENDMENT OF
ment of Rule 12-2.14(6)-S1430	)	RULE 12-2.14(6)-S1430
relating to nongame wildlife	)	NONGAME WILDLIFE IN
in need of management	)	NEED OF MANAGEMENT

TO: All Interested Persons:

1. On August 30, 1979, the Department of Fish, Wildlife, and Parks published notice of a proposed amendment of a rule relating to nongame wildlife in need of management at page 870 of the 1979 Montana Administrative Register, issue No. 16.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The department amended the rule to meet the provisions of Chapter 46, Montana Session Laws of 1979, which directed the department to take the necessary administrative action to remove the wolverine and lynx from the listing of nongame species in need of management.

Robert F. Wambach

Robert F. Wambach, Director
Department of Fish, Wildlife, and Parks

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

NEW EMERGENCY RULES

1. In view of very rapidly rising energy prices, especially those for natural gas service, and the imminent cold weather season in Montana, the Commission finds that it must take immediate steps to assure that residential customers of regulated utilities are not subject to involuntary termination of their utility service. Further, the Commission has been informed that federal programs which have helped Montana's low income utility customers pay their utility bills may receive fewer funds than in previous years. Unavailability of heat during the winter, even for a short period of time, subjects Montana's utility customers to an imminent peril to health and life. At present, there is no Commission rule which prohibits utilities from discontinuing natural gas and electric service during winter months. The Commission is in the process of drafting permanent rules governing involuntary termination of utility service. However, this process will take a minimum of two months which would leave utility customers unprotected until the middle of the winter. This delay would defeat the Commission's desire to assure service for natural gas and electric customers who receive their energy from regulated utilities.

2. The text of the rules are as follows:

RULE I. DEFINITION (1) "Termination of residential service" means a cessation of service caused by the utility for reasons other than protection of public safety and not requested by a customer.

RULE II. TERMINATION OF NATURAL GAS AND ELECTRIC SERVICE (1) During the period November 5, 1979 to March 1, 1980, no termination of residential service may take place. This rule is not in any way intended to relieve any utility customer from the obligation of paying amounts owed to the utility.

3. The rationale of the rules is set forth in the statement of reasons for the emergency.

4. The authority of the Commission to adopt these rules is 2-4-303 and 69-3-103, MCA, IMP. 69-3-102, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE November 5, 1979.

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

IN THE MATTER of the Adoption of a rule granting qualifying licensed motor carriers state-wide authority to transport buildings.	NOTICE OF ADOPTION OF A RULE GRANTING STATEWIDE AUTHORITY FOR THE TRANSPORTATION OF BUILDINGS

TO: ALL INTERESTED PERSONS

1. On August 30, 1979, The Montana Public Service Commission published notice of a proposed adoption of a rule concerning the transportation of buildings at page 951 of the 1979 Montana Administrative Register, issue number 16.

2. The Commission has adopted the rule as noticed except for the following addition (new material underlined):

(RULE I.) 38-2.6(1)-S6195 STATEWIDE AUTHORITY FOR TRANSPORTATION OF BUILDINGS (1) through (6) No change.

(7) Nothing in this rule is to be construed as expanding the kinds of buildings which any particular building mover is authorized to move.

3. No specific objections were received concerning those provisions in the rule as drafted. However, some comments were made suggesting additional provisions.

It was suggested at the hearing and in a pre-filed written comment that the rule could more clearly indicate that while the territory over which a building mover is entitled to move buildings has been expanded to state-wide; the kinds of buildings which any particular building mover is authorized to move has not been expanded. Paragraph (7) has been added to the rule to further clarify this point.

It was also suggested that the rule should include a definition of the term "building." The Commission has not included such a definition because it is concerned that the issuance of a new certificate with the term defined might be interpreted as either expanding or limiting the authority that existed under the old certificate when the term was not specifically defined.

Also suggested were additional standards to be applied in making a determination as to "substantial part of business" as that term is used in the statute. The Commission feels that sufficient standards are already set out in the rule to allow it to make its determination as to the existence of a "substantial part of business."

4. This rule was adopted because Section 69-12-331, MCA, as enacted by the 1979 Montana Legislature (S.B. 70; Chapter 593, Laws of 1979), mandates that the Commission shall adopt rules implementing the new law allowing statewide authority for the transportation of buildings. The authority for the Commission to adopt this rule is based on Section 69-12-331, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE November 5, 1979.

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

In the matter of the Amendment of ARM 40-3.10(6)-S10010 subsection (1) concerning reciprocity fees.	NOTICE OF AMENDMENT OF ARM 40-3.10(6)-S10010 (1) RECIPROCITY

TO: All Interested Persons:

1. On September 27, 1979, the Board of Architects published a notice of proposed amendment of ARM 40-3.10(6)-S10010 subsection (1) concerning reciprocity fees at page 1092, Montana Administrative Register, Issue number 18.

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

3. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

In the matter of the Amendment of ARM 40-3.101(6)-S101010 subsections (ii), (iii), (iv) and (v) of subsection (8)(1)(a) concerning code of ethics.)	NOTICE OF AMENDMENT OF ARM 40-3.101(6)-S101010 CODE OF ETHICS

TO: All Interested Persons:

1. On September 27, 1979, the Board of Speech Pathologists and Audiologists published a notice of proposed amendment of ARM 40-3.101(6)-S101010 subsection (8)(1)(a) (ii),(iii), (iv), and (v) concerning code of ethics at pages 1095 and 1096, Montana Administrative Register, issue number 18.

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

3. No comments or testimony were received.

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

Certified to the Secretary of State, November 6, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 42-2.12(6) -S12005 relating to wine license amendments to retail beer licenses.	)))))	NOTICE OF INTERIM AMENDMENT OF RULE 42-2.12(6)-S12005 relating to wine license amendments.

TO: All Interested Persons:

1. On September 27, 1979, the Department of Revenue published notice of a proposed amendment to rule 42-2.12(6)-S12005, relating to wine license amendments, on pages 1097 and 1098 of the Montana Administrative Register, issue no. 18.

2. The department has amended the rule, on an interim basis, with the following changes (deletions interlined and additions capitalized and underlined):

42-2.12(6)-S12005 WINE LICENSE AMENDMENT (1) Any person holding a retail beer license for consumption on the premises may apply, on forms prescribed by the Department, for an amendment to the retail beer license permitting the applicant to sell wine, provided that applicant conducts, on the same premises, a restaurant or prepared food business that is properly licensed by state and local authorities for the purpose of operating a restaurant or prepared food business and to which the sale of wine shall be supplementary.

~~(2) For purposes of this regulation, a "restaurant or prepared food business" shall be defined as an establishment wherein appropriate and necessary facilities are provided for the preparation of refreshments and meals for the public, wherein, the refreshments and meals are made ready for eating by due assembling, dressing or cooking.~~

~~(3)~~ (2) The sale of wine as being "supplementary" to a restaurant or prepared food business ~~shall mean that the sale of food shall constitute the principal business of the establishment to be licensed.~~ means that both the sale of food and the sale of wine add to the income of the establishment. Neither the sale of food nor wine need be the principal source of income for the establishment.

~~(4)~~ (3) It shall be lawful for a retailer holding a beer and wine license to sell and serve wine ~~on the premises for consumption~~ either ~~on draught or in bottles to be consumed~~ on draught or in bottles to be consumed on ~~or off~~ the premises.

3. At a hearing held on November 2, 1979, parties interested in the proposed amendments were offered an opportunity to comment. The changes on the rule related to two distinct areas:

(a) the definitions of "restaurant", "prepared food business", and "supplementary"; and

(b) the permitting of sales for off-premises consumption.

The witnesses at the hearing fully supported the changes related to the definitions. All who spoke favored the changes, and no testimony was presented in opposition. The question of sale for off-premises consumption, however, was the subject of substantial disagreement. This disagreement hinged on the authority of the department to permit such sales. Witnesses indicated that the approaching holiday season made quick resolution of the amendments with respect to the definitions desirable. No such need for a rapid decision is present on the question of sales for off-premises consumption. In order to permit the full consideration of the legal questions in connection with sales for off-premises consumption while providing the earliest decision in connection with the definitions, the department has amended the rule to incorporate the definitions while leaving the language relating to sales unchanged from the existing rule language.

The proposed changes relating to the sale of wine for off-premises consumption are still under consideration and will be approved, rejected, or modified as soon as all interested parties have had an opportunity to submit supplemental materials as permitted by the hearings officer. The decision will be published in the Montana Administrative Register. The Montana Administrative Procedure Act (MAPA) does not specifically address the approach the department is taking. However, such an interim amendment is not prohibited, and inasmuch as notice was adequately provided initially, the intent of MAPA is satisfied. The use of an interim amendment was raised at the hearing and the parties indicated such an approach would be satisfactory.

The department refers to the amendment as "interim" in the following sense. The consideration of the language relating to sales is not complete. Hence the retention of the existing language is viewed as temporary. The decision as to retention of existing language or amendment of existing language relating to sales for off-premises consumption will be made shortly. The changes relating to the definitions are permanent for purpose of this rule-making proceeding and are intended to have effect regardless of the decision on the "sale" language.

4. Authority to adopt the rule and the amendments is Sec. 16-1-303, MCA, implemented by Sec. 16-4-105, MCA.

Mary L. Craig

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 11-5-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 42-2.22(2)-S22172 Assessment of Furniture and Fixtures - Commercial Establishments	))))	NOTICE OF AMENDMENT OF RULE 42-2.22(2)-S22172 Assessment of Furniture and Fixtures - Commercial Establishments

TO: All Interested Persons:

1. On June 14, 1979, the Department of Revenue published notice of the proposed amendment of rule 42-2.22(2)-S22172, relating to the assessment of furniture and fixtures used in commercial establishments, at pages 536 through 538 of the 1979 Montana Administrative Register, issue no. 11.

2. The Department has amended the rule with the following changes (deletions interlined and additions capitalized and underlined):

42-2.22(2)-S22172. ASSESSMENT OF FURNITURE AND FIXTURES USED IN COMMERCIAL ESTABLISHMENTS. (1)(A) The ~~assessed value~~ average market value of commercial furniture and fixtures shall be determined using ~~assessment~~ TRENDED depreciation tables established by the Department of Revenue. ~~These assessment tables reflect the average remaining life of these kinds of property times a forty percent (40%) equalization factor.~~ The average life of these properties necessitates the use of two tables. A five-year table to be used for those designated properties which research indicates depreciate rapidly and a ten year table which is to be used for all commercial furniture and fixtures which has a longer life. The kinds of fixtures that the five year ~~assessment~~ depreciation table has been designed for and our instruction specifies for are: electronic machines, computer system, data processing equipment, cash registers and all coin operated equipment. All other property will use the ten year table.

~~(2) The minimum assessed market value shall be ten twenty-five percent (10%) (25%) of the cost.~~

~~(3)~~ (B) The following tables are the depreciation schedules referred to in subsection (1) (a) of the rule. The tables were compiled by reference to the Wholesale Price Index for Commercial Furniture and Fixtures published by the Bureau of Labor Statistics.

TABLE 1 - 5 YEARS

YEAR	R-3 % GOOD	*TREND FACTOR	TRENDED & GOOD OR MARKET VALUE
1 yr. old	80%	1.000	80%
2 yr old	61%	1.057	64%
3 yr. old	44%	1.133	50%
4 yr. old	28%	1.179	33%
5 yr. old AND OLDER	17%	1.289	22%

TABLE 2 - 10 YEARS

YEAR	R-3 % GOOD	*TREND FACTOR	TRENDED & GOOD OR MARKET VALUE
1 yr. old	91%	1.000	91%
2 yr. old	82%	1.057	89%
3 yr. old	73%	1.133	85%
4 yr. old	64%	1.179	77%
5 yr. old	55%	1.289	73%
6 yr. old	47%	1.573	74%
7 yr. old	39%	1.635	64%
8 yr. old	31%	1.662	52%
9 yr. old	24%	1.716	41%
10 yr. old	19%	1.891	35%
11 yr. old AND OLDER	14%	1.891	26%

TABLE 1 Vending Machine, Computer Systems, Cash Registers, Coin Operated Equipment, Radio and T.V. Studio Broadcasting Equipment, Motel and Hotel T.V.'s.

TABLE 2 Furniture and Fixtures, Signs, Billboards, Specialized Medical and Dental Equipment, Radio and T.V. Transmitting and Antenna Equipment, Shop Equipment and Tools, Service Station Pumps and Equipment.

(C) THE PROVISIONS OF SUBSECTION (1) OF THIS RULE APPLY TO THE CALENDAR YEAR COMMENCING JANUARY 1, 1979.

(2)(A) THE AVERAGE MARKET VALUE OF COMMERCIAL FURNITURE AND FIXTURES IS DETERMINED BY USING TRENDED DEPRECIATION TABLES ESTABLISHED BY THE DEPARTMENT. THE AVERAGE LIFE OF THESE TYPES OF PROPERTIES NECESSITATES THE USE OF THREE TABLES. A 3-YEAR TABLE IS TO BE USED FOR ELECTRONIC EQUIPMENT THAT IS SUBJECT TO RAPID DEPRECIATION DUE TO

TECHNOLOGICAL OBSOLESCENCE. A 5-YEAR TABLE IS TO BE USED FOR THOSE PROPERTIES THAT RESEARCH INDICATES DEPRECIATE RAPIDLY BUT WHICH DO NOT QUALIFY FOR THE 3-YEAR TABLE. A 10--YEAR TABLE IS TO BE USED FOR THOSE FURNITURE AND FIXTURES NOT SUBJECT TO THE 3-YEAR OR 5-YEAR TABLES. EXAMPLES OF PROPERTIES SUBJECT TO THE VARIOUS TABLES ARE GIVEN IN SUBSECTION (2)(C) OF THIS RULE.

(B) THE FOLLOWING TABLES ARE THE DEPRECIATION SCHEDULES REFERRED TO IN SUBSECTION (2)(A) OF THIS RULE. THE TABLES WERE COMPILED USING A STRAIGHT-LINE DEPRECIATION SCHEDULE WITH A RESIDUAL VALUE OF 10% FOLLOWED BY MULTIPLICATION BY A TREND FACTOR.

TABLE 1 : 3 YEARS

AGE	PERCENTAGE DEPRECIATION	TREND FACTOR	PERCENTAGE TRENDED DEPRECIATION
1 YEAR OLD	70%	1.000	70%
2 YEARS OLD	40%	1.101	44%
3 YEARS OLD AND OLDER	10%	1.194	12%

TABLE 2 : 5 YEARS

AGE	PERCENTAGE DEPRECIATION	TREND FACTOR	PERCENTAGE TRENDED DEPRECIATION
1 YEAR OLD	82%	1.000	82%
2 YEARS OLD	64%	1.101	70%
3 YEARS OLD	46%	1.194	55%
4 YEARS OLD	28%	1.331	37%
5 YEARS OLD AND OLDER	10%	1.456	15%

TABLE 3 : 10 YEARS

AGE	PERCENTAGE DEPRECIATION	TREND FACTOR	PERCENTAGE TRENDED DEPRECIATION
1 YEAR OLD	91%	1.000	91%
2 YEARS OLD	82%	1.101	90%
3 YEARS OLD	73%	1.194	87%
4 YEARS OLD	64%	1.331	85%
5 YEARS OLD	55%	1.456	80%
6 YEARS OLD	46%	1.777	82%
7 YEARS OLD	37%	1.846	68%
8 YEARS OLD	28%	1.877	53%
9 YEARS OLD	19%	1.938	37%
10 YEARS OLD AND OLDER	10%	2.055	21%

(C)(I) THE FOLLOWING TYPES OF PROPERTY ARE SUBJECT TO THE 3-YEAR TABLE: COMPUTER SYSTEMS, DATA PROCESSING EQUIPMENT, ELECTRONIC CASH REGISTERS, AND OTHER ASSOCIATED ELECTRONIC EQUIPMENT.

(II) THE FOLLOWING TYPES OF PROPERTY ARE SUBJECT TO THE 5-YEAR TABLE: VENDING MACHINES ,NONELECTRONIC CASH REGISTERS, COIN-OPERATED EQUIPMENT, RADIO AND TELEVISION BROADCASTING AND TRANSMITTING EQUIPMENT, AND HOTEL AND MOTEL FURNITURE AND FIXTURES.

(III) THE FOLLOWING TYPES OF PROPERTY ARE SUBJECT TO THE 10-YEAR TABLE: SPECIALIZED MEDICAL AND DENTAL EQUIPMENT, REPAIR SHOP TOOLS AND EQUIPMENT, CITIZEN'S BAND RADIOS, MOBILE PHONES, AND PBX TYPE SYSTEMS.

(IV) THE LISTS IN SUBSECTIONS (2)(C)(I), (II), AND (III) ABOVE ARE NOT MEANT TO BE EXHAUSTIVE, BUT ARE INTENDED TO BE ILLUSTRATIVE OF THE TYPES OF PROPERTY SUBJECT TO EACH TABLE.

(D) THE PROVISIONS OF SUBSECTION (2) OF THIS RULE APPLY TO THE CALENDAR YEAR COMMENCING JANUARY 1, 1980.

(3) THE TREND FACTOR USED IN DETERMINING THE TRENDED DEPRECIATION PERCENTAGE WILL BE REVISED EACH YEAR TO REFLECT THE CURRENT COST OF LIVING INDEX.

3. The rule amendments as initially proposed are now found in subsection (1) of the rule with some minor changes for clarity. Subsection (1) applies to calendar year 1979. The changes of note are to be found in subsection (2) of the rule, and these changes apply to calendar year 1980. The changes in the rule for calendar year 1980 were made in response to public comments offered at a hearing held on July 11, 1979, and comments received by the department during the comment period.

Basically, the department has added a 3-year life table for electronic equipment to account for its rapid obsolescence. This change was made in response to those individuals appearing at the hearing who claimed that there was little or no trade-in value on such property and that because of technological advancements, new equipment could be purchased for less than the cost of the originally installed property. Again, in response to the comments made at the hearing to simplify the procedure in valuing this property, the department has adopted a straight-line method of depreciation rather than the use of the R-3 curve.

Several of those commenting objected to the use of trend factors. Their principal arguments were as follows. (1) The use of price indexes exceeds the intent of the legislature when HB 70 was passed into law by the 1977 session. HB 70 established market value as the basis for property to be used

to compute the taxable value, the argument being that HB 70 was supposed to eliminate fractional assessments, or hidden percentages, the use of which hides from the taxpayer the actual value as determined by the county assessor. (2) The Wholesale Price Index, as compiled by the U. S. Department of Labor, is based on national averages and does not necessarily reflect Montana prices. (3) The category, Furniture and Fixtures, published in the Wholesale Price Index includes properties in addition to those properties being valued and in other cases does not include properties being valued. (4) The use of any index that could change values from year to year would make budgeting for taxes difficult. (5) The use of trend factors, as part of department procedures, would require the taxpayer to keep additional records.

The department's response to these arguments is as follows. (1) The legislature passed into law HB 70 which mandated that the department of revenue must use market values and to those values the department must apply the correct percentage, according to the class of property when computing the taxable values. The intention was for the department to adopt valuation procedures that would reflect current market values. The most accurate method to establish market value would require the inspection and appraisal of each individual property by persons qualified to value each type of property. This approach is impossible and impractical therefore the department has proposed procedures that are both possible and practical. To do so, the department must use tools that are readily available and will result in fair and reasonable market values. The value of any property is affected by several circumstances. One such circumstance is the change in the economy from one year to another. Therefore, to estimate with any degree of accuracy the current market value of a property, the department must attempt to measure the economic changes as it applies to that particular property. Therefore to adopt, as a valuation tool, an economic indicator such as the Wholesale Price Index is both reasonably accurate and practical. (2) The Wholesale Price Index is based on national averages as are all available published indexes. The opponents did not suggest the use of a different indicator, that would more accurately reflect the economic trends in Montana; their opposition was to the use of any index. The department's contention is that when uniformly applied to all like property in the state we are not discriminating against any Montana taxpayer. (3) The category of Furniture and Fixtures, published in the Wholesale Price Index, is a general category and may or may not include only those properties being valued. Again the department's contention is that if uniformly applied to all Commerical Furniture and Fixtures and Equipment, the department will not discriminate against any individual

taxpayer by using these factors, though they may not be 100% accurate when considering each individual property. (4) The use of an economic indicator when valuing property could cause taxes to fluctuate from one year to the next and create budget problems for a taxpayer. However, there will be other factors that cause the same problem. One of the reasons the department of revenue has proposed using factors developed from indexes published by the U. S. Government is their availability to anyone, permitting a taxpayer who needs to estimate his property tax for a budget to compute the value of his property. In fact he will be able to estimate the taxable value of his property more easily than he will the mill levy that will be applied to that value. (5) The last argument offered in opposition to the use of trend factors as part of the procedures was that it would necessitate additional records. This position is erroneous because the department does not require the taxpayer to compute market value, taxable value, or tax. His only requirement can be satisfied with information he should have readily available, which is the year the property was purchased and the price that was paid for it.

The department has revised the trend factors to reflect the appropriate values for the calendar year 1980.

4. Authority to adopt the rule and the amendments is given by 15-1-201, MCA, implemented by 15-6-137, 15-6-139 and 15-6-140, MCA.

Mary L. Craig

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 11-5-79

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

In the matter of the amendment of Rule ARM 46-2.6(2)-S680(2)(f) extending eligibility for day care assistance.) NOTICE OF THE AMENDMENT OF RULE 46-2.6(2)-S680

TO: All Interested Persons

1. On May 24, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46-2.6(2)-S680(2)(f) establishing expanded day care assistance at page 476 of the Montana Administrative Register, issue number 10.

2. The Department has amended the rule, 46-2.6(2)-S680 REQUIREMENTS, subsection (2)(f), the following changes:

(f) Expanded day care assistance requires a determination by the local affiliate of Social Services Bureau which is the County Welfare Department that:

(i) THE FAMILY INCLUDES A DEPENDENT CHILD OR CHILDREN DEPRIVED OF THE SUPPORT OF A PARENT ACCORDING TO ARM 46-2.10(14)-S11150 AND THE OTHER PARENT IS WORKING OR EMPLOYED OUTSIDE THE HOME ON A FULL OR PART-TIME BASIS; OR

~~(i)~~ (ii) The ~~single parent or~~ parents are working or employed outside the home on a full or part-time basis; AND

~~(ii)~~ (iii) The family is not eligible for Title XX of the U.S. Social Security Act related day care, Child Welfare Service related day care, Work Incentive Program related day care or Aid to Families with Dependent Children; AND

~~(iii)~~ (iv) The family is qualified on the basis of ~~deprivation and~~ property ownership as defined in ARM sections ~~46-2.10(14)-S11150 and~~ 46-2.10(14)-S11210 AS AMENDED; AND

~~(iv)~~ (v) The family income must be less than 75% of the state's median income for families of like size as published each year in the Federal Register.

~~(v)~~ (g) The expanded day care assistance will provide for the gradual assumption of the total costs of day care by parents of eligible children based upon a 12-step progressive scale establishing income brackets between 150% of the AFDC level and 75% of the state's median income, and establishing support levels between 100% and 0% of day care costs. Tables illustrating income and support levels are as follows:

INCOME LEVELS

Household Size	50% Median Income SSS	STEPS 1	2	3	4	5	6	7	8	9	10	11	12	75% Median Income SSS
2	289	5290-324	325-358	359-392	393-426	427-460	461-494	495-527	528-561	562-595	596-629	630-663	664-697	698
3	368	5389-427	428-467	468-506	507-545	546-585	586-624	625-663	664-703	704-742	743-781	782-821	822-860	861
4	436	5497-554	555-611	612-669	670-727	728-784	785-842	843-900	901-957	958-1015	1016-1073	1074-1130	1131-1188	1189
5	571	5572-637	638-702	703-767	768-832	833-897	898-962	963-1027	1028-1092	1093-1157	1158-1222	1223-1287	1288-1352	1353
6	649	5650-711	712-772	773-833	834-894	895-955	956-1016	1017-1078	1079-1139	1140-1200	1201-1261	1262-1322	1323-1383	1384
7	711	5712-770	771-828	829-887	888-945	946-1003	1004-1062	1063-1121	1122-1180	1181-1238	1239-1297	1298-1355	1356-1414	1415
8	805	5806-859	860-912	913-966	967-1019	1020-1072	1073-1126	1127-1179	1180-1232	1233-1285	1286-1338	1339-1392	1393-1445	1446

SUPPORT LEVELS

Percent SRS pays	100%	92.3%	84.6%	76.9%	69.2%	61.5%	53.8%	46.2%	38.5%	30.8%	23.1%	15.4%	7.7%	0%
Daily rate SRS pays D.C. Center	$5.50	5.10	4.65	4.25	3.80	3.40	2.95	2.55	2.10	1.70	1.25	.85	.40	0
Daily rate SRS pays D.C. Home	$4.50	4.15	3.80	3.45	3.10	2.75	2.40	2.10	1.70	1.40	1.05	.70	.35	0
Hourly rate SRS pays D.C. Center	55¢	55¢	51¢	46¢	42¢	37¢	32¢	28¢	23¢	18¢	14¢	10¢	5¢	0
Hourly rate SRS pays D.C. Home	50¢	46¢	42¢	38¢	35¢	31¢	27¢	23¢	19¢	15¢	12¢	8¢	4¢	0

3. Comments were received that property ownership should not be considered in determining eligibility for day care services.

Response: Because the appropriation received for expanded day care was less than anticipated during the planning of the expanded day care program, some limitations had to be placed on the program. Property ownership places a limitation on the program but it is not as severe a limitation as commentators feared due to recent amendment of 46-2.10(14)-S11210.

Comment was received that the proposed rule qualifies parents or parent for day care assistance based on deprivation if one or both quit working.

Response: The rule has been amended to extend eligibility to those two-parent families in which both parents are employed. Deprivation continues to be an eligibility factor for other family situations.

Comment was received that the sliding scale table failed to round figures to the next higher dollar.

Response: The table has been amended in response to the comment.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

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

In the matter of the amendment of ARM 46-2.6(2)-S680(2)(a) pertaining to requirements for Title XX related day care and the adoption of Rule 46-2.6(2)-S681 establishing limitations to special needs of day care	) NOTICE OF AMENDMENT) OF RULE 46-2.6(2)-) S680 and ADOPTION OF) RULE 46-2.6(2)-S681))

TO: All Interested Persons

1. On May 24, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.6(2)-S680(2)(a) pertaining to requirements for Title XX related day care and the proposed adoption of a rule establishing limitations to special needs of day care at page 481 of the Montana Administrative Register, issue number 10.

2. The agency has amended Rule 46-2.6(2)-S680(2)(a)(i) as proposed.

3. The agency has adopted Rule 46-2.6(2)-S681 as proposed with the following changes:

46-2.6(2)-S681 SPECIAL NEEDS, TITLE IV-A DAY CARE FOR RECIPIENTS IN TRAINING In addition to the basic AFDC grant, day care payment will be included for children of recipients who are attending employment related training unless otherwise provided. AFDC recipients who attend WIN training shall be referred for WIN related day care. AFDC recipients who are employed shall be referred to Title XX for payment of day care services. 45 CFR 233.20(a)(2)(v).

(1) Limitations to Special Needs Day Care:

(a) Title IV-A day care is payments for children of ~~single~~ parents ~~and working parents~~ who are AFDC recipients in training on a full or part-time basis. Training is, but is not limited to: ~~(1) Vocational-Technical~~ vocational-technical schools, ~~(2) Business Colleges~~ business colleges, ~~(3) Junior Colleges~~ junior colleges, ~~(4) University~~ university students, or ~~(5)~~ special classes which may be classified as "employment related training." Students who are working to support their education are included under this rule.

(b) Day ~~Care~~ care needs will be taken into consideration for eligibility determination of an applicant. If an applicant requires special needs day care, this need will be considered in addition to the AFDC grant amount to determine eligibility.

(c) Day care payment shall be added to the AFDC grant amount, and in no cases will Title IV-A day care be paid in the form of vendor payment.

(d) Day care payment will be paid upon evidence of need. (Evidence of need includes ~~an estimate for the first month~~ and receipts ~~thereafter~~ from the provider of day care services.) Evidence of need shall include the signature of the individual provider or his/her designee, the month of services, and the day and year completed.

(e) Day care payment shall not exceed $143 per month, per child for children in day care centers meeting federal guidelines, $121 per month per child for children in licensed day care centers, $121 per month per child for children in day care homes meeting federal guidelines and $99 per month, per child for in-home day care or in day care homes. The recipient shall choose his/her day care provider.

4. Comment: The Montana Day Care Association stated that the imposition of a ceiling for payment for day care services was contrary to the Association's expectation that payment would be made at the "going rate" in a community.

Response: The Department imposed ceiling limits on payment for services so that rates for all the Department's day care programs would be consistent.

Comment: ASMSU Day Care Director stated that the proposed rule will make many students ineligible for day care. Day care makes higher education feasible for many. Higher education frees people from welfare roles. Denying students day care assistance will enlarge welfare rolls.

Response: Students who are recipients of AFDC are not denied day care under this rule.

Comment: ASUM Day Care Program director objected to payment of day care money to recipients. Vendor payments assure facilities operate adequate child care.

Response: By making payments directly to the recipients, responsibility for assuring quality care is left to the parents.

Comment: Providers commented that the federal regulations provide for payment of an additional dollar per day for centers meeting federal guidelines.

Response: The Department responded by amending the rule, see subsection (1)(e), to increase payments by $1 per day in centers meeting federal guidelines.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

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

In the matter of the repeal of Rule 46-2.18(2)-S1830 pertaining to casefinding	)))	NOTICE OF THE REPEAL OF RULE 46-2.18(2)-S1830

TO: All Interested Persons

1. On September 13, 1979, the Department of Social and Rehabilitation Services published notice of a proposed repeal to Rule 46-2.18(2)-S1830 pertaining to casefinding at page 1066 of the 1979 Montana Administrative Register, issue number 17.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received. The agency has repealed 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.

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

In the matter of the amendment of Rule 46-2.10(18)-S11440(1)(i) pertaining to services provided, amount and duration of medical assistance	)))	NOTICE OF AMENDMENT OF RULE 46-2.10(18)-S11440(1)(i)

TO: All Interested Persons

1. On September 27, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11440(1)(i) pertaining to services provided, amount and duration of medical assistance at page 1101 of the 1979 Montana Administrative Register, issue number 18.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule for the following reason: There are 17 licensed home health agencies in Montana. As a result of 46-2.10(18)-S11465 MEDICAL ASSISTANCE, PROHIBITION OF CERTAIN PROVIDER FEE INCREASES, three of the 17 agencies dropped participation in the Medicaid program. This has adversely

affected the health and welfare of Medicaid recipients in two localities, Great Falls and Miles City. Nine of the remaining 14 Medicaid participating home health agencies have continued to provide this necessary service to Medicaid recipients for a substantially lower reimbursement rate than their current costs, which is reflected in Medicare payment.

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

On July 19, 1979, 52 percent of licensed home health providers in Montana, represented by the Montana Association of Home Health Agencies, demonstrated to the satisfaction of the Department, that current Medicaid rates are adversely affecting home health providers. They further demonstrated to the Department that a continued freeze on their rates would result in more agencies dropping from the Medicaid Program unless there is a rate adjustment for R.N. and home health aide visits retroactive to July 1, 1979.

Keith L. Colo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

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

In the matter of the amendment of Rule 46-2.10(14)-S11300 pertaining to WIN refusal	)))	NOTICE OF AMENDMENT OF RULE 46-2.10(14)-S11300

TO: All Interested Persons

1. On September 13, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(14)-S11300 pertaining to WIN refusal at page 1067 of the 1979 Montana Administrative Register, issue number 17.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because of a federal court order ruling fixed sanction periods invalid.

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

In the matter of the amendment of Rule 46-2.18(38)-S18210 (46.7.1504) pertaining to forms utilized in case recording	))))	NOTICE OF AMENDMENT OF RULE 46-2.18(38)-S18210 (46.7.1504)

TO: All Interested Persons

1. On September 27, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46-2.18(38)-S18210 (46.7.1504) pertaining to forms utilized in case recording at page 1099 of the 1979 Montana Administrative Register, issue number 18.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule for the reason that it is more appropriate to treat the various forms and their specific use in the Procedural Manual which Visual Services maintains. These forms are often subject to change and it would be cumbersome and time consuming to post notice of a rule each time a form change were initiated.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 6, 1979.

VOLUME NO. 38 OPINION NO. 45

MUNICIPAL CORPORATIONS - Officers and Employees, salary increases for;
OFFICES - Municipal officers salaries;
SALARIES - Municipal officers, increased during term of office;
STATUTES - Construction of amendatory acts;
MONTANA CODES ANNOTATED - Sections 1-2-207, 7-4-4201.

HELD: Section 7-4-4201, MCA, as amended by chapter 221, L. 1979, does not prohibit a city council from increasing the salary of a municipal officer during the officer's term of office. Accordingly, the salary of a municipal officer may be increased during his term.

22 October 1979

John Forsythe, Esq.
Rosebud County Attorney
Rosebud County Courthouse
Forsyth, Montana 59327

William Meisburger
City Attorney
City of Forsyth
Forsyth, Montana 59327

Gene H. Kurtz, Mayor
City of Forsyth
Forsyth, Montana 59327

Gentlemen:

You have requested my opinion on the following question:

> Whether the salary and compensation of a municipal officer may be increased during his term of office.

Section 7-4-4201, MCA, is the statute that defines the authority of the city or town council with respect to the salaries and compensation of city officers and employees. Prior to the recent recodification this matter was dealt

with in several separate statutes, including section 11-732, R.C.M. 1947, which provided:

> The salary and compensation of an officer must not be increased or diminished during his term of office.

In Broadwater v. Kendig, 80 Mont. 515, 522, 261 P. 264 (1927), the Supreme Court interpreted the precursor to 11-732, R.C.M. 1947, to prohibit a council from changing an officer's salary where the change is adopted and is effective during the officer's current term. The provision had that meaning when it was carried over into the Montana Code Annotated as section 7-4-4201(2).

The 1979 Montana Legislature enacted three pieces of legislation dealing with section 7-4-4201, MCA. The first, House Bill No. 276, was entitled:

> An act to consolidate the provisions relating to the fixing of municipal salaries; permitting the fixing of salaries by ordinance or resolution; and deleting the provision that a municipal officer may not receive an increase or decrease in pay during a term of office; amending section 7-4-4201, MCA.

House Bill No. 276 became chapter 221, L. 1979, when it was signed by the Governor on March 22, 1979. Chapter 221 amended section 7-4-4201, MCA, to read:

> The council shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.

Montana courts have long followed the rule that when the legislature amends a statute it intends to make a change in existing law, and the courts will endeavor to give effect to the amendment. State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 523-24, 525 P.2d 564 (1974). The interpretation of the statute as amended is governed by the intent of the legislature, which is to be determined if possible from the plain meaning of the words used. Haker v. Southwestern Ry. Co., ____ Mont. ____, 578 P.2d 724, 727 (1978). It is clear from the title and substance of chapter 221, L. 1979, that the legislature intended to change section 7-4-4201, MCA, by deleting the prohibition against increasing or

diminishing a municipal officer's salary during the officer's term of office.

Chapter 221 was not the only enactment which dealt with section 7-4-4201(2), however. Both section 1, chapter 428, and section 26, chapter 443, L. 1979, also amended that statute. The former added a proviso that had the effect of allowing the city council to employ the city attorney on a contract basis to perform services not within the scope of his regular duties. The latter, merely a housekeeping measure, replaced the "must" in section 7-4-4201(2) with "may". Neither of these enactments mentioned the other, or chapter 221, and both dealt with section 7-4-4201(2) as though chapter 221 did not exist. The question is whether the enactment of chapters 428 and 443 had the effect of reviving the prohibition against changing a municipal officer's salary during his term of office, which was expressly deleted by chapter 221.

In my opinion, the prohibition could not be revived in that manner. First, the legislature's express deletion of the prohibition in question from section 7-4-4201 was in effect a direct repeal of 7-4-4201(2). No part of an act repealed by another act is revived by repeal of the repealing act without express words reviving such repealed part of an act. Section 1-2-207, MCA. There is no language in either chapter 428 or chapter 443 indicating legislative intent to repeal chapter 221 and thereby revive subsection (2) of 7-4-4201. As the Supreme Court noted in State v. Holt, 121 Mont. 459, 469, 194 P.2d 651 (1948). "It [is] not possible for the Legislature to put life into a dead statute by amendment of it." To the same effect, see Department of Revenue v. Burlington Northern Inc., 169 Mont. 202, 209, 545 P.2d 1083 (1976).

Nor did the enactment of chapters 428 and 443 repeal chapter 221 by implication. Where more than one act relating to the same subject are passed at the same session of the legislature, there is a strong presumption against such repeal. State ex rel. Charette v. District Court, 107 Mont. 489, 495, 496, 86 P.2d 750 (1939).

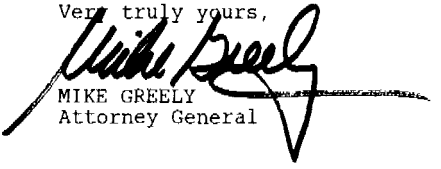
It should also be noted that the code compiler has followed chapter 221, L. 1979, in codifying section 7-4-4201, MCA, (1979). Accordingly, 7-4-4201 now provides:

The council shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.

THEREFORE, IT IS MY OPINION:

Section 7-4-4201, MCA, as amended by chapter 221, L. 1979, does not prohibit a city council from increasing the salary of a municipal officer during the officer's term of office. Accordingly, the salary of a municipal officer may be increased during his term.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 46

COUNTY OFFICERS AND EMPLOYEES - Clerks of court; disposition of fees for execution of passport applications;
COURTS, DISTRICT - Disposition by clerks of fees for execution of passport applications;
FEES - Disposition by court clerks of fees for execution of passport applications;
MONTANA CODE ANNOTATED - Sections 2-16-406(1), 3-2-405, 7-4-2511;
REVISED CODES OF MONTANA, 1947 - Sections 25-201, 25-203, 25-501.1, 82-505;
22 U.S.C. §§ 213, 214.
ATTORNEY GENERAL OPINIONS - 1 OP. ATT'Y GEN. at 397 (1906); 6 OP. ATT'Y GEN. at 109 (1915); 12 OP. ATT'Y GEN. at 118 (1927); 22 OP. ATT'Y GEN. NO. 85 at 143 (1947); 24 OP. ATT'Y GEN. NO. 129 at 179 (1952); 34 OP. ATT'Y GEN. NO. 41 at 209 (1972).

HELD: County clerks of the district court may not personally retain fees for the execution of passport applications. Rather, they must pay the fees into the county treasury. Volume 34 OP. ATT'Y GEN. NO. 41 at 209 (1972), is overruled.

23 October 1979

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have asked my opinion on a question that I have stated as follows:

> Where the county clerk of the district court uses county personnel and facilities for the execution of passport applications, may the clerk personally retain the execution fees, or must the clerk pay the fees into the county treasury?

You state that "county personnel and facilities are being used to assist the clerk of court in filling out applications, collecting fees, and mailing applications for passports." In that situation, my opinion is that the clerk must pay the collected fee into the county treasury.

As you point out, a previous attorney general held that "the ... fee collected for issuing passports may be retained by the clerks of court in the various counties of the state, and the clerks of court are not required to deposit the same with the county treasurer for deposit in the county general fund." 34 OP. ATT'Y GEN. NO. 41 at 209, 212-13 (1972). I have studied this opinion and cannot agree that it is applicable under the circumstances you have described.

The requirements for an application for a passport are given in 22 U.S.C. §213:

> Before a passport is issued to any person by or under authority of the United States such person shall subscribe to and submit a written application which shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport. If the applicant has not previously been issued a United States passport, the application shall be duly verified by his oath before a person authorized and empowered by the Secretary of State to administer oaths.

Under this provision the Secretary of State has authorized and empowered "[a] clerk of any State court of record," among other persons, to administer oaths for passport purposes. 22 C.F.R. §51.21(b)(3).

Fees for the execution and issuance of passports are authorized in 22 U.S.C. §214:

> There shall be collected and paid into the Treasury of the United States quarterly a fee of $10 for each passport issued and a fee in an amount prescribed by the Secretary of State by regulation for executing each application for a passport. Nothing contained in this section shall be construed to limit the right of the Secretary of State by regulation ... to authorize State officials to collect and retain the execution fee....

The Secretary of State has authorized state officials to collect and retain the execution fee in 22 C.F.R. §51.61, as amended by 44 Fed.Reg. 25, 631 (1979):

> Except as provided in §51.63 [providing for exemption from payment of a passport or execution fee], ... the execution fee for a U.S. passport is $4, which shall be remitted to the U.S. Treasury where an application is executed before a Federal official but which may be collected and retained by any State official before whom an application is executed.... The execution fee of $4 shall be paid only when an application is executed under oath or affirmation before an official designated by the Secretary for such purpose.

In Montana, therefore, clerks of the district courts are authorized to execute passport applications, and to collect the execution fee, presently set at four dollars. The question raised is how the clerk is to dispose of those fees once collected. The federal law stated above indicates that the fee need not be remitted to the United States Treasury.

Section 7-4-2511(1), MCA (25-203, R.C.M. 1947), states:

> All salaried officers of the several counties must charge and collect for the use of their respective counties and pay into the county treasury ... all the fees now or hereafter allowed by law, paid or chargeable in all cases.... (Emphasis added.)

Subsection 2 (section 25-201, R.C.M. 1947) emphasizes this requirement:

> No county officer shall receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, but all fees, penalties, and emoluments of every kind must be collected by him for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and shall be credited to the general fund of the county. (Emphasis added.)

The issue that must be resolved to answer your question is whether the execution of a passport application by a clerk of the district court is an "official service rendered." Volume 34 OP. ATT'Y GEN. NO. 41 at 209, 212 (1972), held that it was not an official service because it was not

provided for in the Montana statutes. I disagree with that conclusion.

The fact that a state official performs a function under federal rather than state law does not necessarily mean that he or she is not rendering an official service. When the individual is permitted to perform the function solely because of his or her official status, he or she renders an official service, regardless of whether the service is authorized by state or federal law. This issue was resolved in a number of cases dealing with a situation similar to the one you have presented - clerks of district courts collecting naturalization fees under federal laws.

In 1906, a naturalization act was passed by Congress which authorized each state court clerk "to retain one-half of the fees collected by him" under the act. Act of June 29, 1906, Ch. 3592, §13, 34 Stat. 596, 600. Many states, including Montana, interpreted this to mean that the clerks were entitled to retain those fees for their own benefit. See 1 OP. ATT'Y GEN. at 397 (1906). In 1914, however, the United States Supreme Court held that the act merely left the disposition of the retained one-half of the fees to "whatever disposition may be provided by the state law." Mulcrevy v. San Francisco, 231 U.S. 669, 674 (1914). The Court also approved California's conclusion that Mulcrevy, Clerk of the Superior Court of the City and County of San Francisco, was required to pay the naturalization fees he had collected into the treasury of the City and County of San Francisco. The applicable state provision was similar to section 7-4-2511(2), MCA, quoted above: "[E]very officer shall pay all moneys coming into his hands as such officer, no matter from what source derived or received, into the treasury of the City and County." 231 U.S. at 670. The United States Supreme Court said:

> The provisions are complete and comprehensive and express Mulcrevy's contract with the city, the performance of which his office imposed upon him; and, of course, the fees received by him in naturalization proceedings, because he was clerk of the Superior Court, were in compensation for official acts, not personal acts.
>
> But it is contended by plaintiffs in error that the fees having been received officially is not of importance, that nevertheless he acted as the representative of the United States in execution

> of the policies of the United States and being by the act of Congress invested with his powers he is entitled for himself to the compensation prescribed by the act for their execution, without any liability to account for them to the city. The last proposition, however, does not follow from the others, and the others are but confusing. If it be granted that he was made an agent of the National Government, his relations to the city were not thereby changed. He was still its officer, receiving fees because he was--not earning them otherwise or receiving them otherwise, but under compact with the city to pay them into the city treasury ....
>
> .... Mulcrevy was elected to an office constituted ... under the authority of the State. He was given a fixed salary ... with the express limitation that it should be his complete compensation. He agreed that all other moneys received by him officially should be paid into the treasury of the city. He was given office accommodations, clerks to assist him, and yet contends that notwithstanding such equipment and assistance, notwithstanding his compact, he may retain part of the revenues of his office as fees for his own personal use. We cannot yield to the contention. Nor do we think the act of Congress compels it. The act does not purport to deal with the relations of a state officer with the State.

231 U.S. at 673-74 (emphasis added). The California opinion which the Supreme Court affirmed explained further:

> Language could not be more explicit. It does not admit of doubt or quibble as to its meaning. "No matter from what source derived" means all the money coming into his hands by virtue of and by reason of his being such county clerk and ex officio clerk of the superior court. It was by reason of his election ... and his taking office and giving his bond, and receiving a salary ..., that he was enabled to receive the fees for naturalization proceedings in the superior court. He received them in his official capacity. ... It was not for him to say that the services were performed under the authority of the United States, and not under the authority of the state. His

> bond contained the condition that he would faithfully perform all official duty that might thereafter be imposed upon him by law. The act of Congress was a law.

San Francisco v. Mulcrevy, 15 Cal. App. 11, 113 P. 339, 341-42 (1910), aff'd, 231 U.S. 669 (1914).

After Mulcrevy, the previous Montana Attorney General's Opinion allowing clerks of the district court to personally retain naturalization fees was overruled. See 6 OP. ATT'Y GEN. at 109 (1915); 12 OP. ATT'Y GEN. at 118 (1927); 24 OP. ATT'Y GEN. NO. 129 at 179 (1952).

Montana's statutes are just as explicit as the local laws in Mulcrevy and are clearly applicable to passport application execution fees. Clerks must pay into the county treasury "all the fees ... allowed by law." Section 7-4-2511(1), MCA (25-203, R.C.M. 1947). Fees for the execution of passport applications collected under federal statutes and regulations are fees allowed by law and must, therefore, be paid into the county treasury. "[A]ll fees ... of every kind" for official services must be collected by the clerk for the sole use of the county, paid to the county treasurer, and credited to the county's general fund. Section 7-4-2511(2), MCA (25-201, R.C.M. 1947). Fees for the execution of passport applications, a function that a person is allowed to perform solely because he or she is a county officer, come within the meaning of "all fees of every kind."

Neither of the authorities cited in 34 OP. ATT'Y GEN. NO. 41 at 209 (1972), persuade me that passport execution fees should be personally retained by clerks of the district courts. Volume 22 OP. ATT'Y GEN. NO. 85 at 143 (1947), holds that a city or county deputy officer may accept employment outside of and in addition to his or her official employment for the city or county, where the second job is of a nature not to interfere with the deputy's regular city or county job, and the City Council or Board of County Commissioners approves. That situation is far different from the one you have presented, where the county officer performs a job in an official capacity using county personnel and facilities.

Anderson v. Hinman, 138 Mont. 397, 357 P.2d 895 (1960), is also inapplicable to the situation you have described. That case concerned clerks of the Montana Supreme Court, rather than the district courts. The statutes concerning the

disposition of fees collected by a Clerk of the Supreme Court do not contain the explicit language found in section 7-4-2511(2), MCA (25-201, R.C.M. 1947), requiring "all fees ... of every kind" to be paid to the government. See sections 2-16-406(1) and 3-2-405, MCA (25-501.1 and 82-505, R.C.M. 1947); cf. Strafford County v. Holmes, ___ N.H. ___, 376 A.2d 126 (1977)(holding that county registers of deeds were required to pay certain fees over to the county treasurer).

Hinman also concerned fees for a function which was not authorized or required by any law, state or federal, and which could have been as appropriately performed by any other person. The function of executing passport applications, on the other hand, devolves upon district court clerks by federal law, and may only be performed by those clerks because of their official position.

THEREFORE, IT IS MY OPINION:

> County clerks of the district court may not personally retain fees for the execution of passport applications. Rather, they must pay the fees into the county treasury. Volume 34 OP. ATT'Y GEN. NO. 41 at 209 (1972), is overruled.

Very truly yours,

MIKE GREELY
Attorney General

MG/SKS/br

VOLUME NO. 38 OPINION NO.47

COUNTIES - Water and sewer districts;
WATER AND SEWER DISTRICTS - Requirements to initiate a district;
WATER AND SEWER DISTRICTS - Elections - Meaning of term "registered voter;"
WATER AND SEWER DISTRICTS - Non-resident, corporate property owner as registered voter;
MONTANA CODE ANNOTATED - Sections 7-13-2201 through 7-13-2255.

HELD: A water and sewer district may be initiated by a petition signed by all of the non-resident, corporate property owners within the district where there are no other registered voters in the proposed district.

30 October 1979

James E. Seykora, Esq.
Big Horn County Attorney
Big Horn County Courthouse
Hardin, Montana 59034

Dear Mr. Seykora:

You have asked for my opinion concerning:

> Whether a petition to create a water and sewer district, signed by all of the owners of property within the proposed district, is sufficient to begin the process of creating a county water and sewer district pursuant to sections 7-13-2201 through 7-13-2348 MCA, even if none of the owners of property reside within the boundaries of the proposed county water and sewer district.

You have advised my office that a petition has been filed in Big Horn County for the creation of a water and sewer district. There are no registered voters within the proposed boundaries of the district, and the land that is encompassed within the boundaries is totally held by corporate interests.

To initiate a water and sewer district a petition must be filed with the Board of County Commissioners in the county in which the proposed district is located, signed by at least ten percent of the registered voters of the territory included in the proposed district. Section 7-13-2204(1), MCA. Upon filing of the petition, the county commissioners are required to set the matter for hearing, Section 7-13-2205, MCA, at which point the commissioners determine whether the petition complies with the requirements of law. Section 7-13-2206, MCA. Following the hearing, and upon final determination of the boundaries of the district, the Board of County Commissioners must give notice of an election to be held in the proposed district for the purpose of determining whether the district shall be incorporated. Section 7-13-2208, MCA. If at least forty percent of all registered voters residing in the proposed district vote, and the majority of the votes cast favor the incorporation of the district, the county commissioners shall declare the territory duly organized as a county water and sewer district, and cause to be filed with the Secretary of State a certificate stating that the proposition was adopted. Section 7-13-2214, MCA.

These statutory procedures do not specifically provide for establishing a water and sewer district when there are no registered voters in the territory encompassing the proposed district. Nevertheless, it is my opinion that a water and sewer district may be initiated by a petition signed by all of the owners of the property within the proposed district, whether those owners are natural or corporate persons.

Initially, it is clear that the legislature contemplated the participation of corporate property owners as voters in elections regarding creation of water and sewer districts. Section 7-13-2212, MCA, provides:

> Qualification to vote on question of creating a district. (1) Except as provided in subsection (2), no individual shall be entitled to vote at any election under the provisions of this part, and part 23, unless such individual possess all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district.

> (2) An individual who is the owner of such real property need not possess the qualifications required of an elector in 13-1-111(1)(c) provided that such elector is qualified if he is registered to vote in any state of the United States and files proof of such registration with the election administrator.

Although this provision seems to limit voter participation to "individuals," i.e., natural persons, it is my opinion that such a construction is unwarranted. The term "individual" was substituted for the broader term "person" by the 1979 legislative assembly. However, the legislature left intact two statutory provisions which clearly permit voter participation by corporate entities. Section 7-13-2254, MCA, provides:

> Where a corporation owns real property within the boundaries of the district, the president, vice president, or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation.

This provision appears among the statutory provisions relating to election of officers, as opposed to elections for the creation of the district. However, section 7-13-2215, MCA, allows the county commissioners to combine the election creating the district with the election of officers. Clearly, a voter qualified to vote in one portion of such a consolidated election would be qualified in the other. By leaving these provisions for corporate voting intact, the legislature excluded a construction of the term "individual" which would prohibit corporate property-owners from voting.

The next question raised by your inquiry is that of residency. Again, the codes provide an explicit answer. Section 7-13-2255, MCA, states:

> Provision for vote by a non-resident property owner. An elector owning real property within the district need not reside within the district in order to vote.

It is a fundamental rule of construction that statutes must be read and considered in their entirety. Legislative intent may not be gained from the wording of any particular sentence or section, but only from a consideration of the

whole. Teamsters Local 45 v. Cascade County School District, 162 Mont. 277, 511 P.2d 339 (1973); State Board of Equalization v. Cole, 122 Mont. 9, 195 P.2d 989 (1948). It is clear that by allowing those elections to be combined, it was the intent of the legislature to allow non-resident, corporate property owners to participate in the entire election process.

The logical extension of this reasoning would allow the creation of water and sewer districts upon petition by all of the non-resident corporate owners. A petition to create such a district must be signed by at least ten percent of the registered voters of the territory included in such proposed district. Section 7-13-2204, MCA. The above discussion demonstrates that a non-resident corporate property owner is a "registered voter" in the district for water and sewer district election purposes. A petition reflecting the endorsement of all such "registered voters" is clearly sufficient. A holding to the contrary, particularly in this case, would lead to an inequitable result and defeat the purpose of the above provisions. A statute should not be interpreted to defeat its evident purpose since the objects sought to be achieved by legislation must be given prime consideration. Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963).

The purpose of creating a water and sewer district is to allow for water and sewer facilities to benefit the property within the district. It is, after all, those owners of the real property that bear the tax burden needed to create the district. Those people or corporations should be entitled to participate in the process. This is particularly true where, as you advised, the petition to create the district was signed by all of the owners of the property within the proposed district.

THEREFORE, IT IS MY OPINION:

> A water and sewer district may be initiated by a petition signed by all of the non-resident, corporate property owners within the district where there are no other registered voters on the proposed district.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 48

LICENSES, PROFESSIONAL AND OCCUPATIONAL - Effect of "sunsetting" of Board of Abstracters on requirement that certificate be prepared by licensed title abstracter;
SUBDIVISION AND PLATTING ACT - Approval of final plat, requirement that certificate of title be submitted with final plat;
MONTANA CODE ANNOTATED - Sections 2-8-103(1)(a), 2-8-112, 2-8-122, 33-1-212, and 76-3-612.

HELD: 1. The "sunsetting" of the board of abstracters does not relieve the subdivider of his duty under section 76-3-612, MCA, to provide a certificate of title with his final plat.

2. The "sunsetting" of the board of abstracters repeals by implication the requirement that the certificate of title under section 76-3-612, MCA, be prepared by a licensed title abstracter.

3. A policy of title insurance does not satisfy the certificate of title requirement under section 76-3-612, MCA.

31 October 1979

Charles Graveley, Esq.
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion on the following question:

> What effect does the "sunset" termination of the board of abstracters under section 2-8-103(1)(a), MCA, have on local subdivision review under section 76-3-612, MCA?

Your question arises from the following facts. The 1977 legislature enacted Title 2, chapter 8, MCA, the Montana Sunset Law, which provides for periodic legislative review of state agencies and boards and for the phasing out of

those agencies and boards which do not meet certain performance criteria. Section 2-8-103(1)(a), MCA, specifically terminates the board of abstracters as of July 1, 1979. Hearings were held during the 1979 legislative session and no reestablishment legislation was enacted under section 2-8-122, MCA. The board of abstracters ceased to exist on July 1, 1979. Section 76-3-612, MCA, provides:

> Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a licensed title abstracter showing the names of the owners of record of the land to be subdivided and the names of lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.
>
> (2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

Your question arises from the fact that since the "sunsetting" of the board of abstracters, there no longer exists a procedure by which a person may become a "licensed title abstracter" eligible to perform the services required by subsection (1) of the above section.

It is clear that these legislative actions present a case of amendment or repeal by implication. See 1A Sutherland, Statutory Construction §§ 22.13, 22.22, 23.02 (1972). The requirement in section 76-3-612, MCA, simply cannot be met by a subdivider, since no state agency exists to perform the function of licensing title abstracters. Although amendments or repeals by implication are not favored, see State Board of County Commissioners, 89 Mont. 37, 76, 296 P. 1 (1931), such an amendment or repeal is clearly present where two statutory enactments are as clearly repugnant as these. In re Naegele, 70 Mont. 129, 135, 224 P. 269 (1924). The question remains, however, what is the proper construction of section 76-3-612, MCA, as implicitly amended.

In answering this inquiry, the intent of the legislature, as divined from the plain import of the statutory language, is controlling. The certificate of title requirement in section 76-3-612, MCA, was enacted to inform the local governing body of the existence of encumbrances on the title of land proposed to be subdivided. By "sunsetting" the board of abstracters, the legislature was not expressing the opinion that this information was any less necessary in the process of determining whether a particular subdivision is in the public interest. Rather, the "sunset" of the board was a legislative determination in part that the board's licensing function did not meet the criteria set forth in section 2-8-112, MCA. It is therefore my opinion that the "sunsetting" of the board of abstracters did not obviate the requirement in section 76-3-612, MCA, that a certificate of title be presented with the final plat. Rather, it merely removed the requirement that the certificate be prepared by a "licensed" title abstracter.

Your letter inquires whether a policy of title insurance will satisfy the requirements of section 76-3-612, MCA. In my opinion it will not. As noted above, the purpose of section 76-3-612, MCA, is to inform the governing body of the status of the title. Title insurance is wholly inadequate for this purpose, since such a policy does not purport to detail the status of title, but merely constitutes an agreement that the insurance carrier will defend title if defects should be alleged in the future. See section 33-1-212, MCA. A policy of title insurance does not satisfy the requirements of section 76-3-612, MCA.

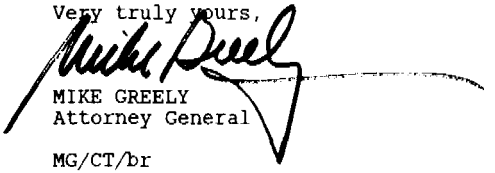
THEREFORE, IT IS MY OPINION:

1. The "sunsetting" of the board of abstracters does not relieve the subdivider of his duty under section 76-3-612, MCA, to provide a certificate of title with his final plat.

2. The "sunsetting" of the board of abstracters repeals by implication the requirement that the certificate of title under section 76-3-612, MCA, be prepared by a licensed title abstracter.

3. A policy of title insurance does not satisfy the certificate of title requirement under section 76-3-612, MCA.

Very truly yours,



MIKE GREELY
Attorney General

MG/CT/br

VOLUME NO. 38 OPINION NO. 49

ARREST - Failure to comply with compulsory motor vehicle liability protection statute;
INSURANCE - Motor vehicle liability policy, who must be insured;
MOTOR VEHICLES - Compulsory liability protection;
MOTOR VEHICLES, MOTOR VEHICLE LICENSE AND REGISTRATION - Proof of liability protection, when required;
PEACE OFFICERS - Power of arrest for failure to comply with compulsory motor vehicle liability protection statute;
STATUTES - Effective date;
MONTANA CODE ANNOTATED - Sections 1-2-201(1), 46-1-201, 46-1-201(8), 46-6-401(4), 46-6-404, and 61-5-116.

HELD: 1. Owners of motor vehicles registered and operated in Montana must secure and maintain motor vehicle liability protection from and after July 1, 1979.

2. Where compliance with Chapter 592 is through the motor vehicle liability insurance option, both the owner and drivers operating the vehicle with the owner's permission must be insured.

3. Both peace officers and private citizens who have reasonable grounds to believe an individual is not in compliance with Chapter 592 may initiate the prosecution of that individual.

4. Both the owner and any non-owner operator of a motor vehicle registered and operated in Montana with the owner's permission are in violation of law if the operator is not insured.

5. Subsequent to the execution of a notice to appear or sworn complaint alleging failure to maintain motor vehicle liability protection, prosecution is the responsibility of the city or county attorney. The prosecuting attorney may cause the dismissal of the charge upon proof that the defendant was in fact maintaining liability protection at the time alleged in the citation/complaint.

31 October 1979

The Honorable Jim Nugent
Missoula City Attorney
City of Missoula
Missoula, Montana 59801

Dear Mr. Nugent:

You have requested my opinion on a number of issues raised by the enactment of House Bill 708 [now Chapter 592, Laws of Montana (1979)] during the last legislative session. The statutory scheme for motor vehicle liability protection contemplated by this enactment includes the alternatives of posting an indemnity bond, providing a certificate of self-insurance, or purchasing and maintaining an automobile liability insurance policy. Since the overwhelming majority of the motoring public will likely comply with this statutory mandate via the liability insurance option, the issues will be discussed with primary reference to motor vehicle liability insurance.

I. From what date must owners of motor vehicles registered and operated in Montana secure and maintain motor vehicle liability protection?

Chapter 592, Laws of Montana (1979), was approved by the Governor on April 17, 1979. The bill did not by its terms specify an effective date.

Section 1-2-201(1), MCA, provides the clear answer to your initial inquiry. "Every statute, unless a different time is prescribed therein, takes effect on July 1 of the year of its passage and approval." Therefore, from and after July 1, owners of motor vehicles registered and operated in Montana must be covered by a current policy of motor vehicle liability insurance or satisfy one of the other two statutory alternatives for liability protection.

II. Must both the motor vehicle and the operator be insured?

A response to your question must be prefaced by some clarification of the nature of motor vehicle liability insurance.

The "risk" covered by the policy of insurance required by Chapter 592 is identified in section 2 of the statute.

> ... loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by a person caused by the maintenance or use of a motor vehicle ...

In the law of insurance, protection against such loss has been characterized as motor vehicle liability insurance. The distinguishing features of such insurance are (a) the relation of the loss to the maintenance or use of a motor vehicle, and (b) the legal liability of a person "insured" under the policy. See Blashfield, Automobile Law and Practice, 3rd Ed. (1965), at § 314.1.

Given that the legal liability of an "insured" is a precondition to the obligations undertaken by an insurance company pursuant to this contract of insurance, the identification of the person or persons insured is of critical legal import. The typical owner's liability insurance policy identifies the owner and his or her spouse as the "named insured." Typically, the owner's liability insurance policy will identify another class of persons whose legal liability for a loss involving the permissive use of the owned vehicle will trigger obligations on the part of the insurance company. This class of "insured" is known as "additional insured"; the policy provision creating this class is referred to as an "omnibus clause."

Section 1 of chapter 592 provides as follows:

> Every owner of a motor vehicle which is registered and operated in Montana by the owner or with his permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person ... (Emphasis supplied) Laws of Montana (1979) Ch. 592, sec. 1.

An oft-repeated rule for construing statutes is that the intent of the legislature as embodied in the plain words of the statute is controlling. See, Dunphy v. Anaconda, 151 Mont. 76, 438 P.2d 660 (1968); State ex rel. Zander v. District Court, 591 P.2d 656, 662 (Mont. 1979). The statute indicates in unambiguous terms that protection must be

secured for the circumstances in which either the owner or a person who has the owner's permission is operating the motor vehicle. In the context of liability insurance, the mandated protection is provided where the operator meets the definition of an "insured" under the terms of an applicable policy of insurance.

III. May the statute be enforced by peace officers or accident investigators dispatched to investigate automobile accidents?

Section 4, Chapter 592, provides in part:

> It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect....

Clearly, peace officers who have reasonable grounds to believe that an individual is in violation of Montana's compulsory insurance law may either effect the person's immediate arrest (§ 46-6-401(4), MCA) or issue a notice to appear (§ 46-6-404, MCA).

However, you have indicated that accident investigators of the type utilized in Missoula are not vested by law with the power to make arrests. They are, therefore, not within the definition of "peace officer" set forth in section 46-1-201(8), MCA. Consequently, their role and authority in enforcing Montana law is the same as that of private persons. The appropriate procedure to be followed by such investigator involves the execution of a sworn complaint indicating reasonable cause to believe an offense has been committed. See, section 46-6-201, MCA.

IV. If the owner and operator of the motor vehicle are separate individuals and neither individual has liability protection, may both be issued citations?

An owner who permits another to drive the owner's motor vehicle must see to it that that person is insured.[1]

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[1] This can be accomplished through the purchase of a typical owner's policy with an "omnibus clause." See discussion in II, A., supra.

Section 1, chapter 592. Failure to provide such protection is a crime and a citation may be issued to the owner:

> Penalties. *** A violation of [sections 2 through 4] is a misdemeanor... Laws of Montana (1979), ch. 592, sec. 4.

Operation of a motor vehicle by one who is not insured is just as clearly a crime and a citation therefor may be issued as well.

> Penalties. It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect. *** Id.

V. If an individual cannot produce proof of liability protection at the scene of an accident, is it reasonable and acceptable to give him a period of time in which to come to the Missoula Police Department and produce such proof?

Section 2, chapter 592, provides in part:

> Proof of compliance. (1) Before any applicant required to register his motor vehicle may do so the applicant must certify and display to the county treasurer an automobile liability insurance policy, a certificate of self-insurance, a posted indemnity bond, or eligibility for an exemption covering the motor vehicle.

The above represents the sole instance in which the owner of a motor vehicle is under an affirmative duty to exhibit proof of compliance with Montana's compulsory insurance law. Nowhere in the law do I find a duty to carry such proof and exhibit it upon demand following an accident. The legislature clearly could have enacted a requirement similar to that which mandates the possession and exhibition upon appropriate demand of an operator's permit by those operating a motor vehicle. Cf. section 61-5-116, MCA. It did not do so.[2] Consequently, a notice to appear or sworn

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[2] It is of some note that the legislature considered and rejected an amendment to ch. 592 that would have required display of proof of liability protection at a time other than registration. Viz., purchase from an automobile dealer.

complaint alleging failure to comply with Montana's compulsory insurance law lacks reasonable cause if it is grounded solely on an operator's failure to provide proof of insurance at the scene of an accident. Subsequent to the execution of a notice to appear or sworn complaint which is founded on reasonable cause, however, a city attorney could exercise prosecutorial discretion and cause the dismissal of a charge upon an adequate showing that the defendant was in fact maintaining appropriate liability protection at the time the citation was issued. Cf., Holliday v. State Bank of Fairfield, 66 Mont. 111, 212 P. 861 (1923) at 118.

THEREFORE, IT IS MY OPINION:

1. Owners of motor vehicles registered and operated in Montana must secure and maintain motor vehicle liability protection from and after July 1, 1979.

2. Where compliance with Chapter 592 is through the motor vehicle liability insurance option, both the owner and drivers operating the vehicle with the owner's permission must be insured.

3. Both peace officers and private citizens who have reasonable grounds to believe an individual is not in compliance with Chapter 592 may initiate the prosecution of that individual.

4. Both the owner and any non-owner operator of a motor vehicle registered and operated in Montana with the owner's permission are in violation of law if the operator is not insured.

5. Subsequent to the execution of a notice to appear or sworn complaint alleging failure to maintain motor vehicle liability protection, prosecution is the responsibility of the city or county attorney. The prosecuting attorney may cause the dismissal of the charge upon proof that the defendant was in fact maintaining liability protection at the time alleged in the citation/complaint.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 50

COUNTIES - Maintenance of bridge not located on county road;
COUNTY COMMISSIONERS - Maintenance of public bridges, what constitutes public bridge;
HIGHWAYS - Public bridges crossing between counties, when not located on county road;
MONTANA CODE ANNOTATED - Sections 7-14-2201(1), 7-14-2202, 7-14-2502(3), and 60-1-103(6).

HELD: The county commissioners are not responsible for maintenance of a bridge that is utilized by the public, but is not located in a city or town in the county or on a county road maintained by the county.

1 November 1979

Charles A. Graveley, Esq.
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion on the following question:

> Whether the county commissioners are responsible for maintenance of a bridge that is utilized by the public but is not located on a county road maintained by the county.

According to your inquiry, a road in Lewis and Clark County is connected with a road in Teton County by means of a bridge over a waterway forming a common boundary between the counties. The bridge is utilized by the public. The road in Lewis and Clark County is also utilized by the public, but is not a county road under section 60-1-103(6), MCA, is not maintained by the county, and is not located within a city or town in the county.

Section 7-14-2201(1), MCA, provides: "Each board of county commissioners shall maintain all public bridges other than those maintained by the department of highways." Section

7-14-2202 further provides that the responsibility for construction and maintenance of bridges crossing between counties is to be apportioned between the counties into which the bridges reach.

Prior to the 1979 legislative session, the term "public bridges" as used in section 7-14-2201(1) was not specifically defined. By analogy to the definition of "public highway" in section 60-1-103(21), it would appear that a "public bridge" included any bridge dedicated to or acquired for public use, regardless of the status of the roads on either side. See section 7-14-2502(3), MCA. Because the bridge described in your inquiry has evidently been utilized consistently by the public since its construction, its maintenance prior to July 1, 1979, would have been the common responsibility of Teton and Lewis and Clark Counties.

In 1979, the legislature amended section 7-14-2201. Laws of Montana (1979), chapter 194, §1. Subsection (4) of that statute now states: "In this part 'public bridges' means public bridges located in towns or cities and bridges located on county roads maintained by the county." With this more limited definition, it is clear that public utilization of a bridge is no longer sufficient in itself to trigger a county's responsibility to maintain the bridge under sections 7-14-2201(1) and 7-14-2202. The bridge you have described is not located in a city or town or on a county road in Lewis and Clark County. Therefore, although it is used by the public, its maintenance is not the duty of the county commissioners of Lewis and Clark County.

THEREFORE, IT IS MY OPINION:

> The county commissioners are not responsible for maintenance of a bridge that is utilized by the public, but is not located in a city or town in the county or on a county road maintained by the county.

Very truly yours,

MIKE GREELY
Attorney General

MG/MBT/ar

VOLUME NO. 38 OPINION NO. 51

COUNTIES - Interlocal agreements, funding participation in;
COUNTY COMMISSIONERS - Tax to fund interlocal recreation agreement, power to levy;
INTERGOVERNMENTAL COOPERATION - County funding of interlocal recreation agreement;
TAXATION - County, special tax for interlocal recreation agreement; County, general mill levy to fund interlocal agreement;
MONTANA CODE ANNOTATED - Sections 7-6-2501, 7-11-108, 7-16-2101, 7-16-2102, and 7-16-2103.

HELD: 1. A county may not levy a special tax pursuant to section 7-16-2102, MCA, to fund its participation in an interlocal agreement providing for cooperative management of recreational programs and facilities if the facilities to be operated and maintained under the agreement do not belong to the county.

2. A county may include the expenses of participation in a valid interlocal agreement in its annual county mill levy under section 7-6-2501, MCA.

1 November 1979

James C. Nelson, Esq.
Glacier County Attorney
P.O. Box 1244
Cut Bank, Montana 59427

Dear Mr. Nelson:

You have requested my opinion on the following questions:

1. Is a county authorized to levy a tax under section 7-16-2102, MCA, to fund its participation in an interlocal agreement providing for the creation of an Interlocal Recreation Department with charge of recreational programs and facilities for the city, county, and school district involved in the agreement?

2. If the county is not authorized to levy the tax under section 7-16-2102, from what source may it lawfully appropriate funds for performance of the interlocal agreement?

Sections 7-11-101 through 7-11-108, MCA, provide for the establishment of agreements between local governmental units to furnish services and facilities to residents on a basis of mutual advantage. Section 7-11-108 gives the contracting public agencies the specific power to appropriate funds for implementation of the interlocal agreement.

According to your inquiry, Glacier County, the city of Cut Bank, and Cut Bank High School District No. 15 desire to enter into an interlocal agreement providing for the creation of an Interlocal Recreation Department that would have charge of all recreational programs and facilities in accordance with the authority granted from each of the governmental bodies. The recreational facilities to be employed are not owned by Glacier County. For at least the first year of the agreement, the county proposes to allocate revenue sharing monies to fund its participation in the agreement. Your inquiry concerns the source from which the county may lawfully appropriate funds in the future for continuing performance of the contract.

Section 7-16-2101, MCA, gives the board of county commissioners the power to erect and maintain certain cultural, social, and recreational facilities. Section 7-16-2102(1) goes on to provide for a special tax levy for operating the facilities after their construction. The tax, however, is specifically designated for use only for "county-owned" civic, youth, and recreation centers. Furthermore, the tax monies and the income from the facilities must be kept in a separate fund deposited with the county treasurer and can be used for no other purposes than those of the facilities owned by the county. Section 7-16-2103, MCA.

It is apparent from the unambiguous language of these statutes that the legislature intended to authorize the county commissioners to levy a special tax on property in the county only for the limited purpose of operating cultural, social, and recreational facilities that are owned by the county itself. Therefore, it is my opinion that the tax authorized by section 7-16-2102 may not be used to fund the county's participation in the interlocal agreement in question because the recreational facilities to be employed do not belong to Glacier County.

As stated earlier, section 7-11-108 gives the board of county commissioners the power to "appropriate funds" for legitimate interlocal agreements. Section 7-11-108, MCA.

There is no indication in the statute that the funds must be derived from a special tax levy. Section 7-6-2501, MCA, authorizes the annual levy of county taxes "for county purposes as may be necessary to defray the current expenses thereof...." Therefore, as long as the interlocal agreement is a valid obligation and expense of the county, tax monies collected pursuant to the general county mill levy may be used to fund the county's part in the agreement.

THEREFORE, IT IS MY OPINION:

1. A county may not levy a special tax pursuant to section 7-16-2102, MCA, to fund its participation in an interlocal agreement providing for cooperative management of recreational programs and facilities if the facilities to be operated and maintained under the agreement do not belong to the county.

2. A county may include the expenses of participation in a valid interlocal agreement in its annual county mill levy under section 7-6-2501, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 52

CLERK OF DISTRICT COURT - Disposition of fees collected by clerk of district court in counties adopting a six-mill district court levy;
COURTS, DISTRICT - Use of general fund revenues to supplement six-mill district court levy;
MONTANA CODE ANNOTATED - Sections 3-5-515 and 25-1-201

HELD: 1. Fees collected by clerks of the district courts do not accrue as a revenue item to the district court fund in those counties adopting a six-mill district court levy.

2. The board of county commissioners may supplement the six-mill levy with general fund revenues in financing the district court.

2 November 1979

Harold F. Hanser, Esq.
Yellowstone County Attorney
Courthouse Building
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

> In counties which assess a six-mill levy under Chapter 692, Laws of 1979, do fees collected by the clerk of the district court accrue as a revenue item to the district court fund or to the general fund?

Chapter 692, Laws of 1979, authorizes counties to establish a district court fund and, in the case of first and second class counties, to levy up to six mills for the fund. Your question is whether the fees collected by district court clerks should also be credited to the fund. In my opinion they should not. Section 25-1-201, MCA, sets forth the various fees collected by the clerk of the district court, with the exception of the fee for naturalization; see section 3-5-515, MCA. Section 25-1-201(2) requires the clerk to deposit forty percent of the fees set forth in that section in the general fund, and to remit sixty percent of

the fees to the State. Section 3-5-515, MCA, requires all naturalization fees to be deposited in the general fund. Chapter 692 does not alter the clear mandate of these statutes.

You should be aware, however, that the district court fund may contain funds raised from sources other than the six-mill levy. In 38 OP. ATT'Y GEN. NO. 31, I held that the six-mill levy could be supplemented by general fund appropriations. Thus, the commissioners could appropriate the district court fees to the district court fund if they saw fit to do so.

THEREFORE, IT IS MY OPINION:

1. Fees collected by clerks of the district courts do not accrue as a revenue item to the district court fund in those counties adopting a six-mill district court levy.

2. The board of county commissioners may supplement the six-mill levy with general fund revenues in financing the district court fund.

Very truly yours,

MIKE GREELY
Attorney General

MG/CT/br

VOLUME NO. 38 OPINION NO. 53

RETIREMENT SYSTEMS - Teachers: Sabbatical leave as creditable service;
SCHOOL DISTRICTS - Sabbatical leave for teachers; retirement credit;
TEACHERS - Sabbatical leave as creditable service under retirement system;
TEACHERS' RETIREMENT BOARD - Sabbatical leave as creditable service;
MONTANA CODE ANNOTATED - Sections 19-4-101(8),(11),(20), 19-4-204(2), 19-4-302(1)(a),(2), 19-4-304, 19-4-401(1), (2)(a), 19-4-403, 19-4-602(1), 19-4-605(1), 19-4-804, 19-4-902, 20-1-101(20).
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. ATT'Y GEN. NO. 80 (1977).

HELD: 1. The Teachers' Retirement Board may award a public school teacher up to one month's creditable service for one or more continuous months of sabbatical leave without pay, if the board adopts such a policy.

2. The Teachers' Retirement Board must award a public school teacher creditable service for sabbatical leave with pay.

3. When a school district grants a public school teacher sabbatical leave with pay, the district must: (a) deduct from the teacher's compensation 6.187 percent of the full compensation actually paid the teacher for the employee's contribution, and (b) contribute 6.312 percent of the full compensation actually paid the teacher for the employer's contribution.

5 November 1979

Mr. F. Robert Johnson
Executive Secretary
The Teachers' Retirement System
1500 Sixth Avenue
Helena, Montana 59601

Dear Mr. Johnson:

Your predecessor asked for my opinion on the following questions:

> Should a public school teacher be given retirement credit for sabbatical leave? If so, what contributions should be paid to the retirement system?

Public school teachers in Montana are required to become members of the Teachers' Retirement System under section 19-4-302(1)(a), MCA. Both the employer and the member contribute to funds that are part of the system. See §§ 19-4-602(1) and 19-4-605(1), MCA. Benefits upon retirement are based on the member's "average final compensation" and the number of years of "creditable service." See §§ 19-4-804 and 19-4-902, MCA. Your questions turn on whether a teacher's activity while on sabbatical leave constitutes "creditable service."

"Creditable service" is defined in section 19-4-401(2)(a), MCA, as follows:

> The creditable service of a member includes the following: ... each year of service for which contributions to the retirement system were deducted from his compensation. ...

Under this provision, there are three basic requirements for retirement credit: (1) membership, (2) service, and (3) compensation.

A teacher who is granted a sabbatical leave retains active membership status in the Teachers' Retirement System. See

37 OP. ATT'Y GEN. NO. 80 at 3 (1977); §§ 19-4-101(11); 19-4-302(1)(a),(2); 20-1-101(20), MCA. A sabbatical leave is generally granted for the express purpose of allowing a teacher to engage in some activity that will improve him or her professionally. Such activity, since it is related to the performance of instructional duties, constitutes "service." See 37 OP. ATT'Y GEN. NO. 80 at 3 (1977); §§ 19-4-101(20); 19-4-302(1)(a), (2), MCA.

The final requirement, compensation, apparently is met in some situations but not in others. Your predecessor stated in his letter:

> There is no statewide policy governing salary paid a public school teacher while on sabbatical leave. Some school districts grant sabbatical leave without pay, while others may pay a stated dollar amount, the difference between the teacher's contract salary and the salary paid the substitute, one-fourth of contract salary, or one-half of the contract salary, which appears to be the maximum salary paid by any school district while a teacher is on sabbatical leave.

Where the school district does not compensate the teacher, the third requirement for creditable service is not met. A sabbatical leave without pay does not constitute "creditable service" under section 19-4-401(2)(a), MCA. However, subsection (1) states that "creditable service ... accumulates to the member's credit on the basis of the retirement board's policy governing creditable service." Section 19-4-204(2), MCA, states:

> It is the duty of the retirement board to adopt policies for the determination of creditable service in the retirement system implementing the following guidelines: ... Not more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay.

My review of the rules of the Teachers' Retirement Board, ARM 2-3.38(1)-03800 through S38130 reveals no policy for awarding or denying creditable service for absence without pay under this guideline. Once the board adopts such a policy, it should be applied uniformly to all teachers on sabbatical leave without pay.

A sabbatical leave with pay does constitute "creditable service" under section 19-4-401(2)(a), MCA. Contributions are to be made in the usual manner. Section 19-4-602(1), MCA, states:

> Contributions to...the annuity savings fund shall be made in the following manner: ... Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date on which the member became a member an amount equal to 6.187% of the member's earned compensation.

Section 19-4-605(1), MCA, states:

> Contributions to ... the pension accumulation fund shall be made as follows: ... Each employer shall pay into the pension accumulation fund an amount equal to 6.312% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

"'Earned compensation' means the full compensation, pay, or salary actually paid to a member and reported to the retirement system...." § 19-4-101(8), MCA (emphasis added).

Of course, any teacher who wishes to engage in some employment that does not require membership in the Teachers' Retirement System but that enhances his or her teaching experience may terminate his or her contract with the school district rather than request sabbatical leave. If the teacher then terminates membership in the Teachers' Retirement System under section 19-4-304, MCA, and at some later date returns to employment as a Montana public school teacher, he or she may apply for creditable service for the employment while "on leave" under section 19-4-403, MCA. That provision applies only to former members of the system who are reapplying for membership, not to teachers who have retained membership in the system during a sabbatical leave.

THEREFORE, IT IS MY OPINION:

1. The Teachers' Retirement Board may award a public school teacher up to one month's creditable service for one or more continuous months of sabbatical leave without pay, if the board adopts such a policy.

2. The Teachers' Retirement Board must award a public school teacher creditable service for sabbatical leave with pay.

3. When a school district grants a public school teacher sabbatical leave with pay, the district must: (a) deduct from the teacher's compensation 6.187 percent of the full compensation actually paid the teacher for the employee's contribution, and (b) contribute 6.312 percent of the full compensation actually paid the teacher for the employer's contribution.

Very truly yours,

MIKE GREELY
Attorney General

MG/SS/dc

VOLUME NO. 38 OPINION NO. 54

APPROPRIATIONS - Community colleges, budgets, legislative appropriations;
BOARD OF REGENTS - Community colleges, budget approval, legislative appropriations;
COMMUNITY COLLEGES - Budgets, state financing, appropriations;
MONTANA CODE ANNOTATED - 20-9-112, 20-9-134, 20-15-103, 20-15-301 et seq., 17-7-101 et seq.

HELD: The General Appropriation Act of 1979 (House Bill No. 483) properly appropriates State funds to the community colleges.

5 November 1979

Ted O. Lympus, Esq.
Flathead County Attorney
Flathead County Courthouse
P.O. Box 1516
Kalispell, Montana 59901

Dear Mr. Lympus:

You have requested my opinion on the following question:

> Does the General Appropriation Act of 1979 (House Bill No. 483) properly appropriate state funds to community colleges?

The real issue here is which entity has the ultimate responsibility and authority to determine how much money a community college receives from the State.

The trustees of a community college district are required, after public notice and opportunity for public input, to "adopt a preliminary budget for the next ensuing school year." Section 20-9-112, MCA. The county superintendent then sends the completed budget forms to the Board of Regents. Section 20-9-134, MCA. Community college districts are "under the supervision and coordination" of the Board. Section 20-15-103, MCA.

This budget is referred to again in section 20-15-302, MCA, as the "annual operating budget" which must be approved by the Board. Once the budget is approved, section 20-15-302

provides that it "shall be the budget of the community college district submitted to the state budget director in accordance with Title 17, chapter 7." An "operating budget" is a schedule approved, in this case by the Board of Regents, which indicates expenditure levels for each agency program. Expenditures from legislative appropriations may be made only in accordance with approved operating budgets. See section 9, General Appropriation Act of 1979, House Bill 483.

The annual operating budget of a community college district is financed at a 65:35 state-to-local funds ratio. Section 20-15-303, MCA. That section provides that estimated revenues from tuition and fees plus a mandatory mill levy "will provide 35% of the annual budget approved by the Board of Regents." This total is then subtracted from the approved annual operating budget and the difference "shall be financed by a state appropriation for the purpose of financing community colleges in an amount of 65%." Subsection (2) of that same section, however, further provides that if "the state cannot fund the community colleges at 65% of the regents recommended budget," then the remainder may be raised through an additional levy approved by the voters of the community college district under section 20-15-306, MCA.

The General Appropriations Act of 1979 appropriated various amounts from the general fund to the three community colleges, and provided:

> Funds generated from student fees and mandatory mill levies in excess of the funds necessary to provide 35% of the respective college's operating budget shall be used to reduce the following year's mandatory mill levy provided in 20-15-303(1)(b).
>
> The above appropriations provide 65% of the respective operating budgets that shall be approved by the board of regents pursuant to 20-15-302 and 20-15-303. The remaining 35% of the operating budget shall be financed from student tuition and fees and a mandatory mill levy as provided in 20-15-303. The board of trustees of a community college district may elect to adopt an operating budget in excess of 100% of the general fund budget specified herein, only with the approval of

> an additional mill levy proposition as provided in 20-15-306 or upon receipt of federal, private or other funds not included in the general fund budget. General fund budget as used herein includes only state appropriations, student fees, and the mandatory mill levy, levied under the provisions of 20-15-303(1)(b).

You have suggested that the language just quoted conflicts with 20-15-302 in that that section mandates that the budget approved by the Board of Regents shall be the budget for the college.

Part of the problem here apparently stems from confusion over the term "budget". In the first place, the word budget is not properly synonymous with the term "appropriation." An appropriation is a grant of authority enacted by the legislature empowering an agency to expend public funds. This is done in Montana through the framework of a budget, which is a request to the legislature for a given amount of spending authority. The Governor is the chief budget officer of the State, section 17-7-103, and is responsible for collecting budget information from each agency. Sections 17-7-111 and 17-7-112, MCA. If any agency fails to provide the requested information the budget director must prepare a "budget request" for that agency. Section 17-7-112, MCA. The budget director must then examine all available budget information to determine the "necessity of the disbursements and funds requested.... The entire budget must present a "balanced financial plan" showing a "balance between the total proposed disbursements and the total anticipated receipts...." Section 17-7-123, MCA. Only legislative branch requests may be submitted by the Governor "without changes." Section 17-7-122, MCA.

Excepting only obligations of the State and salaries required to be paid by the constitution or laws of the State, the legislature "may amend the proposed budget bill." Section 17-7-131, MCA. "In other words, the legislature has the power to adjust and finalize the budget." Judge v. Legislative Finance Committee, 168 Mont. 470, 480, 543 P.2d 1317 (1975).

Thus, the budget for the community college districts, approved by the Board of Regents, fits into the Budget Act procedure of section 17-7-101 et seq., just described. It is a budget request which may be altered by the chief budget

officer, and which is ultimately subject to legislative approval. It is clear from 20-15-303, MCA, that while sixty-five percent state funding of community colleges is the goal, the legislature may or may not appropriate an amount equal to sixty-five percent of the districts's proposed budget. If it does not, an additional levy, which must be approved by the voters in the district, is authorized to make up the deficiency. The General Appropriation Act of 1979 does no more than to reflect this entire statutory scheme, especially the requirements of 20-15-301 et seq..

Montana law requires both the budget director to prepare, and the legislature to adopt, a balanced budget. See 17-7-121(1), 17-7-123, MCA; Montana Constitution, Art. VIII § 9. The only way either of these entities can fulfill this duty is to have the power and discretion to examine and amend any agency's budget request. Otherwise, the legislature's appropriation authority is being exercised by another body.

THEREFORE, IT IS MY OPINION:

The General Appropriation Act of 1979 (House Bill No. 483) properly appropriates State funds to the community colleges.

Very truly yours,

MIKE GREELY
Attorney General

MG/ABC/dc

VOLUME NO. 38 OPINION NO. 55

CONFLICT OF INTEREST - County Commissioners, membership on boards receiving or disbursing county contract funds;
CONTRACTS - County contracts, conflict of interest, what constitutes interest in;
COUNTIES - Contracts, county commissioners interested in;
COUNTY COMMISSIONERS - Conflict of interest, board membership in organizations receiving county contract funds, Code of Ethics;
MONTANA CODE ANNOTATED - Sections 2-2-102(1),(4)(f), 2-2-125, 2-2-131, 7-5-2106(3), 45-7-401.

HELD: 1. A county commissioner who is a voting member of a board that channels county contract funds to other organizations but does not itself derive any economic benefit from the contract does not have a prohibited interest in the contract under section 7-5-2106(3), MCA, and does not breach his fiduciary duty under section 2-2-125(2)(b), MCA, by acting officially to allocate funds to the board for subsequent disbursement.

2. A county commissioner who is a voting member of the board of an organization that actually receives county contract funds does not have a prohibited conflict of interest under section 7-5-2106(3), MCA, unless the commissioner receives a personal pecuniary or proprietary benefit from the contract. He does, however, breach his fiduciary duty under section 2-2-125(2)(b), MCA, by acting officially to award county contracts to the organization unless he complies with the voluntary disclosure requirements of section 2-2-125(3), MCA.

5 November 1979

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

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

> Whether members of the board of county commissioners have a conflict of interest because they sit on the boards of organizations that receive or disburse county contract funds.

According to your inquiry, the commissioners in question sit as voting members on two types of boards. One type is a regional governing board acting as a conduit of federal and county funds to organizations that provided services for the county. The other type of board presented in your inquiry is the board of a nonprofit organization that actually enters into contracts with the county and receives county funds for its services. The commissioners sitting as members on both types of boards are reimbursed for their expenses, but do not receive any other form of compensation for their activities.

Section 7-5-2106(3), MCA, relating to conflicts of interest of members of the board of county commissioners, provides:

> No member of the board must be directly or indirectly interested:
>
> ***
>
> (3) in any contract made by the board or any person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

Persons violating this statutory proscription may be liable to criminal prosecution for official misconduct under section 45-7-401, MCA.

The Montana Supreme Court has not as yet addressed the question of what specific type of interest is prohibited by section 7-5-2106. Other courts, however, have generally held that only monetary or proprietary consideration is included in statutes prohibiting public officials from having an interest in public contracts. See, e.g., Appeal of Yenerall, 67 A.2d 565, 566 (Pa. Super. 1949); Githens v. Butler County, 165 S.W.2d 650, 652 (Mo. 1942). As stated in Yetman v. Naumann, 492 P.2d 1252, 1255 (Ariz. App. 1972):

> We do not believe ... that the legislature intended that the word "interest" for purposes of disqualification was to include a mere abstract interest in the general subject or a mere possible contingent interest. Rather, the term refers to a pecuniary or proprietary interest by which a person will gain or lose something as contrasted to general sympathy, feeling or bias.

Moreover, the prohibited economic consideration must flow directly or indirectly to the official himself, not merely to a person or organization to which the official may have a sentimental or intellectual attachment. See Appeal of Yenerall, 67 A.2d at 566; Chadwell v. Commonwealth, 157 S.W.2d 280, 283 (Ky. 1941).

The basic reason for limiting the prohibition in conflict of interest statutes to interests of a pecuniary or proprietary nature is to provide a clear and workable standard for application of the statutes, a particularly important consideration in view of the possible imposition of criminal sanctions against officials violating the prohibition. See Commonwealth v. Albert, 29 N.E.2d 817, 820 (Mass. 1949). Based on the reasoning and holdings of the cases dealing specifically with conflict of interest statutes, it is my opinion that the definition of "interest" in section 7-5-2106 must also be limited to a commissioner's personal pecuniary or proprietary benefit or loss from the contract with the county.

When section 7-5-2106(3) is applied to the facts set forth in your inquiry, it is apparent that the commissioners' membership on the boards in question does not constitute a conflict under that statute. The regional governing boards do not actually receive any contract funds from the county, but merely channel funds to other organizations.

Neither the boards nor their members derive any economic benefit from the county contracts. The other board you described does receive funds from contracts with the county. Its members, however, do not personally profit from the contracts. Therefore, although a commissioner serving as a member of that board may be inclined to award county contracts to the board on the basis of personal preference and involvement, he does not have the type of pecuniary or proprietary interest in the contracts that is prohibited by section 7-5-2106(3).

In 1977, the legislature enacted a code of ethics for persons holding public office in Montana. Section 2-2-125, MCA, applies specifically to the conduct of local government officers and employees. Subsection (2)(b) of that section prohibits an officer or employee of local government from "perform[ing] an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent." For purposes of the code of ethics, a "financial interest" is defined in part as "a directorship or officership in a business." § 2-2-102(4)(f), MCA. A "business" is further defined as including "a corporation ... or any other individual or organization carrying on a business, whether or not operated for profit." § 2-2-102(a), MCA.

It is clear from the facts you have presented that membership on the regional governing boards does not bar a county commissioner from performing official acts involving those boards. Although the commissioners are officers on those boards, their actions in awarding contract monies does not benefit the boards economically. The boards simply funnel the awarded funds to organizations that provide services to the county. On the other hand, a county commissioner who is a voting member of the board of a private, nonprofit corporation that actually receives money from the county must be seen as violating his fiduciary duty under section 2-2-125(2)(b) if he acts officially to award county contracts to the organization. By his official act, the organization of which he is an officer is directly and substantially affected to its economic benefit.

Subsection (3) of section 2-2-125, however, goes on to provide that notwithstanding his interest in an organization or business, a county commissioner may perform an otherwise prohibited official act if his participation is necessary to commission action and if he complies with the voluntary disclosure requirements of section 2-2-131. Thus, a commissioner must reveal the nature of the private interest creating the conflict prior to voting to award a county contract to an organization of which he is a voting board member.

THEREFORE, IT IS MY OPINION:

1. A county commissioner who is a voting member of a board that channels county contract funds to other organizations but does not itself derive any economic benefit from the contract does not have a prohibited interest in the contract under section 7-5-2106(3), MCA, and does not breach his fiduciary duty under section 2-2-125(2)(b), MCA, by acting officially to allocate funds to the board for subsequent disbursement.

2. A county commissioner who is a voting member of the board of an organization that actually receives county contract funds does not have a prohibited conflict of interest under section 7-5-2106(3), MCA, unless the commissioner receives a personal pecuniary or proprietary benefit from the contract. He does, however, breach his fiduciary duty under section 2-2-125(2)(b), MCA, by acting officially to award county contracts to the organization unless he complies with the voluntary disclosure requirements of section 2-2-125(3), MCA.

Very truly yours,

MIKE GREELY
Attorney General

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