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**RESERVE**

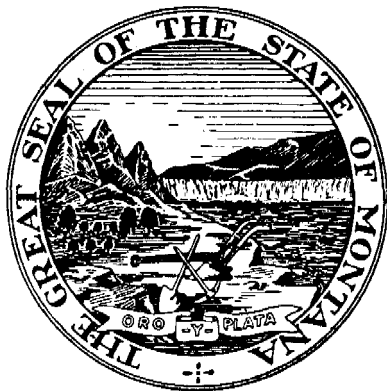
# **MONTANA ADMINISTRATIVE REGISTER**

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OF MONTANA

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1980 ISSUE NO. 13  
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#### NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend, or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59601.

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.

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INFORMATION REGARDING THE RECODIFICATION OF THE  
ADMINISTRATIVE RULES OF MONTANA

The recodification of the administrative rules is complete as of July 1, 1980. The complete reprint and distribution of the newly recodified set of the Administrative Rules of Montana (ARM) should be accomplished by September, 1980. The provisions of the law relating to recodification are found in Title 2, Chapter 4, MCA - the Montana Administrative Procedure Act. This act will be included in Volume 1, Title 1, Chapter 7, of the ARM.

Title Assignments - All title assignments remain the same with the exception of Title 10 - Education. This title has been expanded to include: Superintendent of Public Instruction, Board of Public Education, State Library Commission and the Montana Arts Council. Each of the above named agencies is assigned separate chapters in Title 10. Title 48, originally assigned to the Superintendent of Public Instruction and the Board of Public Education, is deleted.

New Numbering System - A new three-part numbering system was adopted during recodification (Example - 44.1.1101). The number to the far left designates the title number assigned to a department, the number between the periods designates the chapter number, and the number to the far right indicates the subchapter number with the last two numbers indicating the individual rule number.

New Rules or Rule Changes Published in the Montana Administrative Register (MAR) During Transition Period - During the transition period from July 1, 1980, until the distribution of

the newly recodified set of ARM, users will not have ready access to the language of the recodified rules. During this period, rulemaking agencies will publish in the MAR the entire language of a proposed new rule either in the notice or adoption stage, with the exception of an adoption by reference.

The proposed amendment of a recodified rule will contain the entire language of the rule with interlining and underlining to indicate the changes made to the rule. If the language of a recodified rule appears in the Montana Administrative Register, then the issue and page number where the rule is found will be listed. In this case, only the amended language may be published. The new three-part number will be listed.

In the case of a proposed repeal of a recodified rule, the agency will list the new three-part number followed in parenthesis by the old rule number assigned before recodification, and the page number in the ARM where the rule can be found. If substantive changes were made to the rule during the period that replacement pages were not furnished to the ARM, then the page number in the MAR will also be listed where the changes can be found.

Please direct questions relating to recodified rules to the affected agency or to the Administrative Rules Bureau, Secretary of State's office, Room 202, Capitol Building, Helena, Montana 59601.

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BEFORE THE WORKER'S COMPENSATION COURT  
STATE OF MONTANA

In the matter of the adoption )	NOTICE OF PUBLIC HEARING ON
of additional procedural )	ADOPTION OF PROCEDURAL RULES
rules for the Worker's )	FOR APPELLATE REVIEW, ATTORNEY
Compensation Court )	FEES AND MOTIONS TO PRODUCE

1. On August 19, 1980, at 10:00 a.m., a public hearing will be held in the Senate Chamber, State Capitol, Helena, to consider the adoption of additional rules governing practice and procedure before the Worker's Compensation Court.

2. The proposed rules do not replace or modify any sections currently found in the ARM.

3. The proposed rules provide as follows:

RULE I ATTORNEY FEES (1) When a petition for hearing has been filed by an attorney representing a claimant, and as part of the petition, attorney fees and costs are requested to be assessed against the insurer, the attorney shall file a copy of the fee agreement previously filed with the division with the court.

(2) If the court orders attorney fees and costs assessed against an insurer pursuant to 39-71-611, MCA, because of a finding by the court that there was an improper denial or termination of benefits, the attorney representing the claimant shall file with the court a detailed statement of the time and costs incurred in representing the claimant on the issues before the court that resulted in the order assessing costs and attorney fees. A copy of the statement shall be served on the insurer. The court shall establish a reasonable hourly figure and issue an order setting an attorney fee and cost amount with consideration given to the statement filed. The court is not bound by the statement filed by the attorney.

(3) If the court orders attorney fees and costs assessed against an insurer pursuant to 39-71-612, MCA, the attorney representing the claimant shall file with the court a detailed statement setting forth his request for an award of attorney fees and costs. A copy of the statement shall be served on the insurer. The court shall issue an order setting an attorney fee and costs amount with consideration given to the statement filed. The court is



not bound by the statement filed by the attorney.

(4) The insurer may, within 10 days of receipt of a copy of a statement filed under subsections (2) and (3) of this rule, file objections to any part of the statement submitted. Such objections shall set forth in detail the reason for the objections. The court shall review and consider the objections before issuing its order setting attorney fees and costs.

(5) Unless otherwise stated in the court's order setting an award for attorney fees and costs, the amount awarded by the court shall be the exclusive amount the attorney is entitled to for representing the claimant on the issues litigated that resulted in the award of attorney fees and costs. When an attorney has been successful in establishing that a claimant is entitled to substantial future weekly payments, the court may, in its discretion, consider such benefits in its award of attorney fees.

(6) Within 10 days after receipt of the court order setting attorney fees and costs, either the claimant's attorney or the insurer may file objections to the order and request an evidentiary hearing. The court shall set the matter for hearing and receive evidence regarding the order. After the hearing, the court shall issue an order modifying or affirming its previous order.

RULE II. APPEALS REGARDING CRIME VICTIMS' COMPENSATION, OCCUPATIONAL DISEASE CLAIMS, AND SUBROGATION (1) An appeal from a final decision of the division of workers' compensation regarding a crime victim's compensation claim, an occupational disease claim, or an order of the division regarding subrogation pursuant to 39-71-414(5), MCA, shall be filed with the court by filing a petition for appeal with the court within thirty (30) days after service of the final decision of the division. Rule 1(2) (ARM 2.52.201(2)) applies to the filing of a petition.

(2) The petition for appeal shall state the grounds upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) The filing of the petition shall not stay the division's decision. However, the court may, upon application of a party, order a stay upon terms which the court considers proper.

(4) Within 10 days after the service of the petition, the division shall transmit to the court the original or a certified copy of the entire record of the proceeding under review.

(5) If, before the date set for hearing, application is made to the court for leave to present additional

evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the division, the court may order that the additional evidence be presented to the court.

(6) The hearing regarding the petition shall be set with other proceedings in accordance with Rule 8 (ARM 2.52.208)

(7) The court shall base its decision on the record, additional evidence (if allowed), and oral argument. The court may require briefs or other documents to be filed by a party, and a proposed order.

(8) Rule 19 (ARM 2.52.221), relating to rehearings, applies to decisions under this rule. However, the decision of the court may or may not be in the form of findings of fact or conclusions of law.

RULE III MOTIONS TO PRODUCE (1) A party may serve upon an adverse party any time after a trial has been set a request (a) to produce and permit the party making the request, or his agent, to inspect and copy any designated documents or records, or to copy, test, or sample any tangible things, which may be relevant and which are in the possession, custody or control of the party upon whom the request is served; or (b) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the limits of relevancy.

(2) The party upon whom the request is served shall serve a written response within 30 days after service of the request. The court may allow a longer or shorter time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. For a partial objection the part shall be specified. The requesting party may then move for an order compelling response in the manner provided for compelling answers to interrogatories at ARM 2.52.215(3) and the motion shall be similarly treated.

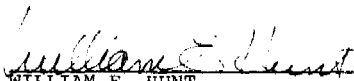
4. The rationale for adopting these rules is the need for guidelines in cases where a successful claimant is awarded reasonable attorney's fees, and for establishing an appellate procedure in those areas where the legislature has given the Worker's Compensation Court jurisdiction to review contested case decisions of the Division of Worker's

Compensation. A rule on production of documents, etc., is proposed to clarify that this form of discovery is permitted.

5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Worker's Compensation Court, 1422 Cedar-Airport Way, Helena, Montana 59601, no later than August 25, 1980.

6. Clarice V. Beck has been designated to preside over and conduct the hearing.

7. The authority of the court to make the proposed rules is based on and implements 2-4-201, MCA.

  
WILLIAM E. HUNT  
JUDGE

Certified to the Secretary of State July 15<sup>th</sup>, 1980.

BEFORE THE WORKERS' COMPENSATION COURT  
OF THE STATE OF MONTANA

In the matter of the )	NOTICE OF PUBLIC HEARING ON
amendment of )	AMENDMENT OF ARM 2.52.201,
procedural rules )	2.52.203, 2.52.205, 2.52.208,
	2.52.211, 2.52.212, 2.52.213,
	2.52.214, 2.52.215, 2.52.217,
	2.52.218, 2.52.220, 2.52.221,
	and 2.52.222

TO: All Interested Persons

1. On August 19, 1980, at 10:00 a.m., a public hearing will be held in the Senate Chamber, State Capitol, Helena, to consider the amendment of rules governing practice and procedure before the Workers' Compensation Court.

2. The rules in their present form were adopted in 1979 (1979 MAR p. 798) and thus are not currently published in the ARM.

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

2.52.201 PETITION FOR HEARING (1) All requests for hearing before the workers' compensation court shall be in petition form. The petition shall include the following information:

(a) that the parties have made an effort to solve the dispute existing between the parties and that a solution of the dispute cannot be reached by them. A copy of the letter or document the petitioner relies upon as evidence that a solution to the dispute cannot be reached by the parties must be attached to the petition. If a letter or document cannot be obtained, then a paragraph in the petition should state what the petitioner has done to resolve the dispute and the circumstances surrounding the failure to reach a resolution.

(b) reference to every particular section of the Montana Code Annotated or the rules in the Administrative Rules of Montana that are involved in the dispute.

(c) a short and plain statement of the matters as asserted and every disputed issue that the petitioner wishes the court to make a determination of after a hearing.

(d) a description of the accident, including the county where it took place.

(e) a statement that the petitioner has freely exchanged all available medical reports with the defendant, and pursuant to ARM 2.52.212 will continue to do so. Medical reports are not to be attached to the petition.

(f) the signature of the petitioner or his attorney.  
2. Same as existing rule.

2.52.203 SIGNED PLEADING--(1)--Every petition requesting a hearing and every answer from a party represented by an attorney shall be signed by the party's attorney of record or by the party. A party who is not represented by an attorney shall sign the petition or answer and state the party's address. Petitions and answers need not be verified or accompanied by affidavit.

SERVICE (1) The court will serve the furnished copies of the petition upon defendants, employers, and others as designated in the claimant's instructions, by mailing them at Helena, Montana, with first class postage prepaid. The petitioner is responsible for providing correct names and addresses.

(2) All pleadings subsequent to the original petition, every written motion, paper relating to discovery, or other document which is described in Rule 5, M.R.C.P. shall be served and accompanied by proof of service as provided in Rule 5, M.R.C.P. The clerk will not accept any document offered for filing which has not been served as required under this rule, and may either return or destroy any such document.

(3) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period of time after the service of a notice or other paper upon him and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

2.52.205 AMENDING PLEADING (1) Petitions for hearing and answers to petitions may be amended within 20 days of receipt by the court of the petition or answer. The court may, in its discretion, allow parties at any time to amend petitions or answers prior to a hearing or at a hearing. Parties may respond to amended petitions and answers within 10 days of receipt of an amended petition or answer and shall respond to amended petitions and answers when requested by the court. Normally, Amendments are considered at the pretrial and are contained in the pretrial order.

2.52.208 TIME AND PLACE OF HEARING GENERALLY (1) For the purposes of hearings setting trials, the court uses the fiscal year of July 1 to June 30, and has four terms of

three months each and has designated them as the July term, October term, January term and April term.

(2) In addition, the court has divided the state into nine geographic areas made up of the several counties (subsection (5) of this rule). Except for emergency hearings (ARM 2.52.209) or upon stipulation of all the parties and consent of court for hearings elsewhere, hearings will be held at the time and in the place designated in subsections (3) through (4) of this rule.

(3) Court will be in session at the call of the court, ~~but normally will be in the following areas~~ Cases will be heard during the October, ~~January~~ and April terms, ~~in the area cities (except as indicated) at the following times,~~ subject to any exceptions the court may make:

- (a) Kallispell area, the first Tuesday week
- (b) Missoula area, the second Tuesday week
- (c) Butte area (in Helena), the third Tuesday week
- (d) Bozeman area (in Helena), the fourth Tuesday week
- (e) Billings area, the fifth Tuesday week
- (f) Miles City area (in Billings), the sixth Tuesday week
- (g) Glasgow area, the seventh Tuesday week
- (h) Great Falls area (in Helena), the eighth Tuesday week
- (i) Helena area, the ninth Tuesday week

Unless the Court decides otherwise, this schedule will be followed for setting the hearings to be held in Helena during the January and July terms.

(4) Court will ~~commence~~ normally convene at 9:30 a.m. Tuesday and it will be in session ~~until noon and will reconvene at 1:30 p.m. and~~ or recess at the convenience of the court. If all matters before the court are not completed on Tuesday the first day, scheduled for trials the court will reconvene on the following and as many days thereafter as is necessary to complete the docket. ~~if Tuesday is a holiday, court will convene on the following Wednesday.~~

(5) ~~Hearings will be held in~~ Each of the nine areas at designated for trial schedule purposes is named for the principal the cities listed for city in the counties making up the area as follows:

- (a) through (iii) same as existing rule.

(6) Upon receipt of a petition meeting the requirements of these rules, the court will set a hearing trial in for the area where the accident occurred and at a time that will allow 20 30 days notice to be given of the hearing trial. However, the court may, for good cause, hold a hearing trial over to the next regular hearing trial date in or for that the area. Any petition filed less than 30 days before the beginning of a week designated for trials in that area, but filed early enough so that at least 10 days' notice of a pretrial conference can be given to the defendant, will be scheduled for pretrial conference during the setting for that area.

2.52.211 WITNESS LIST (1) A party may demand a list of all witnesses the opposing party will call at a hearing trial or the court may demand a witness list from any party. Such a demand can only be made after a hearing trial date has been set, and such a demand must be complied with ~~within-10-days-of-the-date-the-party-received-the-demand~~ by the time of the pretrial conference. A complete list of witnesses shall be included in the pretrial order. A witness may not be called by a party at a hearing trial if the name of the witness was not timely given to the opposing party upon demand or by the court as stated above. However, the court may, in its discretion and for good cause, waive the provisions of this rule at a hearing trial.

2.52.212 MEDICAL REPORTS (1) There must be an exchange of medical reports and other medical information based upon examination of the claimant between the parties to the dispute prior to any scheduled hearing trial. Medical reports may be submitted as evidence by stipulation between parties ~~or-by-the-laying-of-proper-foundation-at-the-time-of-trial~~.

2.52.213 PRETRIAL CONFERENCE (1) A pretrial conference shall precede every trial unless otherwise ordered by the court.

(2) The court shall make an order which recites the action taken at the conference and shall set forth the following:

(a) statement of jurisdiction pursuant to 39-71-2905; MEA, the appropriate statutes and rules;

(b) motions of either party;

(c) uncontested facts which the parties may agree are true and which will require no proof;

(d) petitioner's and defendant's issues of fact and law;

(e) exhibits which may be introduced;

(f) witnesses which may be called with a brief summary of their testimony;

(g) pretrial discovery desired; i.e., depositions, interrogatories;

- (h) estimated length of trial, time and place; and
- (i) such other matters as may aid in the disposition of the matter.

2.52.214 DEPOSITIONS (1) Depositions of witnesses who cannot be available at the time of the hearing trial may be taken prior to trial in accordance with the procedures set forth in Rule 30, M.R.C.P., or subsequent to a hearing trial with the approval of the court. The cost of the depositions shall be borne by the party requesting the depositions. Rule 32 (a)(3), M.R.C.P., is not applicable to actions in the Workers' Compensation Court, and the deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds that the interests of justice would be served thereby.

(2) Objections (other than as to form) to questions or answers in a deposition shall be made by motion at the outset of the trial.

2.52.215 INTERROGATORIES (1) same as existing rule.

(2) same as existing rule.

(3) If a party fails to answer an interrogatory, the discovering party may move for an order compelling an answer. An evasive or incomplete answer is to be treated as a failure to answer. The court shall hear the arguments for and against the motion and award the prevailing party reasonable expenses incurred, including attorney's fees, in obtaining the order or in opposing the motion.

2.52.217 VACATING OR CONTINUING HEARING CONFERENCE OR TRIAL (1) No hearing conference or trial may be vacated or continued without consent of the court. Counsel may at the time of the pretrial request that the matter be vacated and continued. The judge or hearing examiner, for good cause shown, may grant this request. After a hearing matter has been vacated or continued once, subsequent requests for continuance shall be accompanied by a statement in writing of the party or counsel setting forth the reasons for the continuance.

2.52.218 CONDUCT OF HEARING TRIAL (1) Hearings Trials will be held in courtrooms when available or any other designated place.

(2) The hearing trial will be conducted in the same manner as a trial without a jury. The hearing trial shall proceed in the following order, unless the court, for good cause and special reason, otherwise directs:

(a) The party on whom rests the burden of the issues may briefly state his case and the evidence by which he



expects to sustain it.

(b) The adverse party may then, or at the beginning of his case, briefly state his defense and the evidence he expects to offer in support of it.

(c) The party on whom rests the burden of the issues must produce his evidence; the adverse party will then produce his evidence.

(d) The parties will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

~~(e)--Upon completion of the case by both sides, the party upon whom the burden rests may make a closing argument or statement followed by one by the adverse party.~~

2.52.220 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS (1) The court may require briefs or other documents to be filed by the a party.

(2) The court may require either or both parties to file findings of fact and conclusions of law.

(3) Briefs, findings of fact, and conclusions of law will normally be filed within 20 days of the hearing at a subsequent date set by the judge or hearing examiner.

(4) If parties are directed to file simultaneously by a certain date, any briefs, findings, or conclusions reaching the court more than 3 days after the deadline or mailed after the deadline will not be accepted or filed.

2.52.221 MASTERS AND EXAMINERS--RECOMMENDATIONS FOR BENCH ORDERS (1) The court shall appoint masters or examiners when, in the judgment of the court, justice will be served. Masters will be appointed and serve pursuant to Rule 53 M.R. CIV. P. Examiners will be appointed and serve pursuant to 2-4-611, MCA.

(2) An examiner may during or at the conclusion of a trial or a pretrial conference, advise the parties that an interlocutory order for payment of benefits or other relief to a party appears to be justified and will be forthwith drawn up for approval by the judge.

2.52.222 REHEARING (1) same as existing rule.

(2) same as existing rule.

(3) same as existing rule.

(4) A proposal for decision by hearing examiner will be given preliminary approval by the court and reviewed at the motion of a party as provided in this section. Conclusions of law and interpretations of statutes or rules written by a hearing examiner may be reconsidered by the court upon its own motion or at the request of a party.

Findings of fact made by a hearing examiner will not be rejected or revised unless the court first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

4. The rationale for amending these rules is to reduce travel in the winter, to prevent ex parte communications, to clarify the role and authority of hearing examiners, to improve the efficacy of discovery, and to clarify certain aspects of the present rules.

5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Worker's Compensation Court, 1422 Cedar-Airport Way, Helena, Montana 59601, no later than August 25, 1980.

6. Clarice V. Beck has been designated to preside over and conduct the hearing.

7. The authority of the court to make the proposed rules is based on and implements 2-4-201, MCA.

  
WILLIAM E. HUNT  
JUDGE

Certified to the Secretary of State July 8<sup>th</sup>, 1980

BEFORE THE OFFICE OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF THE PROPOSED AMENDMENT  
of Rule 10.16.801 Establishment) OF RULE 10.16.801 Establishment  
of Special Education Program ) of Special Education Program

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 16, 1980, the Office of Public Instruction proposes to amend rule 10.16.801 Establishment of Special Education Program.

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

(1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) After September 1, 1977 the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person herein defined between the ages of six and 18 inclusive. ~~After September 1, 1980, such services shall be provided for all handicapped children between the ages of three and 21 inclusive.~~

(3) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program.

(3) The rule is proposed to be amended to conform to House Bill 624 which makes school district provision of special education programs permissive in certain cases and amends 20-1-101, 20-5-101, 20-7-402, 20-7-411 and 20-7-412.

(4) Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Shirley Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601 no later than August 14, 1980.

(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 a written request for a hearing and submit this request along with any written comments he has to Shirley Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601, no later than August 14, 1980.

(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 over a thousand persons based on the number of special education personnel and parents of special education children in Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-7-402(2), 20-7-403(2)(7)MCA. The implementing authority is 20-7-411, 20-7-414 MCA.

GEORGIA RICE  
SUPERINTENDENT OF PUBLIC INSTRUCTION

BY

*Alvin Thomas, Deputy*

Certified to the Secretary of State, July 7, 1980

BEFORE THE OFFICE OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the Amendment )	NOTICE OF PROPOSED AMENDMENT OF
of Rule 10.16.802 Establishment)	RULE 10.16.802
of Individual District Special )	
Education Program )	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 16, 1980 the Office of Public Instruction proposes to amend rule 10.16.802 Establishment of Individual District Special Education Program.

2. The rule is to be amended as follows:

(1) The board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of six and eighteen inclusive. The trustees of any district upon obtaining the approval of the Superintendent of Public Instruction shall establish and maintain a special education program whenever, in the judgement of the trustees and the Superintendent of Public Instruction:

(a) there are sufficient numbers of handicapped children in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual services.

(2) Programs may be established for handicapped children between the ages of 0 through five and children ages 10 to 25 and nineteen through twenty-one when the Superintendent of Public Instruction and the trustees have determined that such programs will:

(a) assist a person to achieve levels of competence that will enable him/her to participate in the regular instruction of the district when he/she could not participate without special education;

(b) permit the conservation or early acquisition of skills which will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the person.

(3) ~~Programs may be established for handicapped persons between the ages of 19 and 21 inclusive when the superintendent of public instruction and the trustees have determined that such programs will contribute to the educational development of those persons~~

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular education programs to a similar age group unless specifically provided by law.

(4) When an agency which has responsibility for a handicapped person over twenty-one but not more than twenty-five, inclusive, the agency may contract with the local school district to provide such services.

3. The rule is proposed to be amended to conform to the requirements of House Bill 624.

4. Interested parties may submit their data, views and arguments

concerning the proposed amendment in writing to Shirley Miller, Office of Public Instruction, Special Education Unit, State Capitol, Helena, Montana, 59601, no later than August 14, 1980.

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 a written request for a hearing and submit this request along with any written comments he has to Shirley Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601, no later than August 14, 1980.

6. If the agency received a request for a public hearing on the proposed amendment from either 10 percent 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 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 over a thousand persons based on the number of special education personnel and parents of special education children in Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-7-402(2), 20-7-403(2)(7)MCA. The implementing authority is section 20-7-412, 20-7-411, 20-7-414 MCA.

GEORGIA RICE  
SUPERINTENDENT OF PUBLIC INSTRUCTION

BY

*Chas. J. Thomas, Deputy*

Certified to the Secretary of State, July 7, 1980.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT OF  
of Rule 10.16.2004 (describing) RULE 10.16.2004 (Preschool Programs)  
preschool programs) )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 16, 1980 the Office of Public Instruction proposes to amend rule 10.16.2004 which describes Preschool Programs.

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

(1) Educational programs may be developed for preschool handicapped children age three 0 through five providing the district obtains prior written approval from the Office of Public Instruction.

(2) ~~Approved procedures for preschool handicapped children are:~~

(a) ~~The school district is to submit a letter to the Office of Public Instruction requesting permission to operate a program. The letter should briefly describe the program, identification process and/or number of handicapping conditions to be treated;~~

(b) ~~a program unit application, Part B, is to be submitted for each professional staff member.~~

(2) The program must be included in the district's approved budget.

(3) Preschool programs may be established to:

(a) assist a person to achieve levels of competence that will enable him/her to participate in the regular instruction of the district when he/she could not participate without special education;

(b) permit the conservation or early acquisition of skills which will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the person.

(4) Any district operating an approved special education class or program for children under the age of six years will be eligible for financial assistance in accordance with 20-7-431 M.C.A., and for transportation reimbursement under 20-7-442 M.C.A.

3. The rule is amended to correspond to House Bill 624 making school district provision of special education programs permissive in certain cases.

The old subsections 2(a)(b) are deleted because they do not accurately reflect current application procedures.

The new subsection 2 is identical to old subsection (2)(c).

The purposes outlined in subsection 3(a)(b)(c) reflect the purposes outlined in House Bill 624.

Subsection (4) discusses financial assistance for permissive preschool programs, as provided by 20-7-443 M.C.A. It reflects an attempt to gather provisions relating to preschool together in a usable form.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Shirley Miller, Office of Public Instruction, Special Education Unit, Helena, Montana, 59601, no later than August 14, 1980.

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 a written request for a hearing and submit this request along with any written comments he has to Shirley Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601, no later than August 14, 1980.

6. If the agency receives a request for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are 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 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 over a thousand persons based on the number of special education personnel and parents of special education children in Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-7-402(2), 20-7-403(2)(7)MCA. The implementing authority is 20-7-443, 20-7-442, 20-7-412, 20-7-414, 20-7-431 MCA.

GEORGIA RICE,  
SUPERINTENDENT OF PUBLIC INSTRUCTION

BY

*Oliver Thomas, Deputy*

Certified to the Secretary of State, July 7, 1980



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF PROPOSED AMENDMENT
ment of Rules 10.57.102,	)	OF RULES 10.57.102, 10.57.105,
10.57.105, 10.57.204,	)	10.57.204, 10.57.301, 10.57.403,
10.57.301, 10.57.403,	)	10.57.404 and 10.57.405
10.57.404 and 10.57.405,	)	
concerning teacher cer-	)	NO PUBLIC HEARING CONTEMPLATED
tification and endorsements.	)	

TO: All Interested Persons:

1. On August 16, 1980, the board of public education proposes to amend Rules 10.57.102, 10.57.105, 10.57.204, 10.57.301, 10.57.403, 10.57.404 and 10.57.405, which concern definitions, certification of non-citizens, experience verification and approved endorsement areas.

2. The rules proposed to be amended provide as follows:  
10.57.102 DEFINITIONS (1) "Acceptable evidence" means official and up-to-date transcripts, written statements of appropriate officials and such other data as may be deemed necessary by the board of public education and/or the superintendent of public instruction.

(2) "Accredited" refers to approval (accreditation) by a national or regional accreditation association that is acceptable to the board of public education. State approval of programs leading to certification may also be required.

(3) "Approved colleges" are those listed in the Education Directory, Part 3, Higher Education, published by the U.S. Office of Education and/or the Report of Credit Given by Educational Institutions published by the American Association of Collegiate Registrars and Admissions Officers.

(4) "Appropriate area(s)" are those subject field(s)--such as English, mathematics, science, social studies, etc.--identified by the board of public education.

(5) "Appropriate level(s)" means elementary, secondary or other levels as defined by the board of public education.

(6) "Appropriate official" means the superintendent of public instruction, the dean of the school of education or another official designated by them.

(7) "Approved teacher education program" means a program for teacher preparation accredited by a national or regional accrediting association and/or recognized by the board of public education.

(8) "Endorsement" means official indication of the level and/or the appropriate area in which the certificate holder is authorized to teach.

(9) "Elementary endorsement" of class 1, class 2 and class 5 certificate means the holder is authorized to teach in grades kindergarten through nine, except that ninth-grade teachers shall have a minimum of 30 quarter (20 semester) credits in all areas in which they teach.

(10) Issuance of the class 2 certificate at secondary level requires a teaching major of at least 45 quarter (30 semester) credits and a teaching minor of at least 30 quarter (20 semester) credits, or at least 60 quarter (40 semester) credits in a single field of specialization, provided these fields are subjects commonly offered for credit in the high school curriculum and provided that the pattern of preparation constitutes the approved secondary teaching education program of an accredited college or university. At least 24 quarter (16 semester) credits of professional preparation for teaching, to include student teaching, are also required. Within the total preparation, emphasis must be placed on student growth and development, behavior, reading and writing skills. The student teaching experience, if taken at grade levels 7-12, must also have an observation period at grade 5 or 6. If the student teaching experience is at grade 5 or 6, an observation period must be taken at grades 7-12.

(a) Secondary endorsement of the class 1, 2 or 5 certificate means the holder is authorized to teach in grades 7-12 until 1983. After that time, secondary programs will cover 5-12. Secondary endorsement is accompanied by endorsement as to the appropriate area(s) in which the holder is authorized to teach.

(11) "Teacher education" means a curriculum recognizing a desirable proportion of academic and professional courses and should not be construed only as a degree in education.

(12) "Year of study" means an academic year, or the equivalent, comparable to at least 45 quarter (30 semester) hours of graduate or undergraduate credit.

(13) "Year of validity" means the full year of a teaching certificate. All certificates are validated July 1 through June 30.

(14) One semester credit is equivalent to one and one-half quarter credits; one quarter credit is equivalent to two-thirds semester credit.

(15) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of section 20-1-101 MCA, and the policies of the board of public education, and who is employable by a district as a member of its instructional, supervisory or administrative staff.

(16) "Year of teaching experience" means employment during a school year by an educational institution as a member of the instructional staff. Experience will be considered on an individual basis by the appropriate official.

(17) "Year of administrative experience" means employment during a school year by an educational institution as a member of the supervisory or administrative staff.

(18) "Equivalency" means an experience that strengthens the ability of a person to teach or to administer, which may be substituted for traditional academic work or teaching experience.

(19) A certificate is considered lapsed if:

(a) the holder has not earned the required number of renewal credits or the equivalent during the term of the certificate (credits earned during summer school immediately following the expiration date of a certificate also will be considered for renewal);

(b) the experience requirement has not been met; or applied for renewal by June 30 following the year of expiration.

(20) Approved Specialist Program: "Approved specialist program" means a program for the preparation of specialists accredited by a national or regional accrediting association or recognized by the board of public education. In addition, state approval of programs leading to this certificate may also be required. (Persons authorized to apply for the specialist certificate: school psychologists.)

10.57.105 CERTIFICATION OF NON-CITIZENS (1) Request for initial certification: A board of trustees requesting certification for a non-citizen candidate must verify its intent to employ the candidate. The candidate must otherwise qualify for eligibility of the appropriate certificate. Class 5 provisional certification may be issued provided the candidate is otherwise qualified for a Montana certificate except for citizenship.

(2) Credit requirements for recertification of non-citizens holding class 5 certification shall be the approximate equivalent of renewal requirements for the class of certificate for which the candidate is academically eligible, as follows:

(2) Credit requirements and limitations:

(a) Class 1 level -- no renewal credit required;

(a) Specific credit requirements: Credit requirements for recertification of non-citizens holding class 5 provisional certification shall be the same as renewal or reinstatement requirements for regular certification.

(b) Class 2 level -- 3 quarter credits each two years;

(b) Limitations: A maximum of five (5) years of class 5 certification is allowed under State Board of Public Education policies. Candidates who have held class 5 provisional certification for five (5) years and have not become United States citizens will not be eligible for further Montana certification until such time as they are granted citizenship.

(c) Class 5 level -- as specified in the plan of professional intent - up to 16 quarter credits each two years.

(3) Candidates who, on the expiration date of the class 5 certificates, have not become United States citizens will not be eligible for further Montana certification until such time as they are granted citizenship.

(3) Class 5 provision (specialist) certificate: A one (1) year class 5 provisional (specialist) certificate may be issued to an applicant qualified for class 6 certification except for U.S. citizenship. No more than four (4) renewals of the class 5 will be granted. If coursework is needed in addition to citizenship to qualify for a class 6, that coursework must be

completed before the first class 5 renewal can be processed. Subsequent renewals will be for citizenship only. Upon attaining the necessary coursework and citizenship, the applicant may apply for the class 6 certificate.

10.57.204 EXPERIENCE VERIFICATION (1) The determination of educational experience appropriate to renew any certificates will be made by the superintendent of public instruction.

(a) At least 100 days of substitute teaching experience is required to constitute the equivalent of successful teaching experience in the five-year period preceding the expiration of a current Montana certificate.

(2) Persons employed in educational positions involved in instruction with agencies under the jurisdiction of the state may submit the experience gained in these positions to meet the verification of experience requirement for renewal of teaching or administrative certificates they hold. Other stipulated requirements must be met.

(3) Incumbency in the office of county superintendent will be sufficient to serve as the required verification of experience for renewal of teaching or administrative certificates held by the county superintendent. Other stipulated requirements must be met.

(4) When teaching experience is required for a new certificate applicant, the majority of the experience required must be obtained in a school organization consistent with Montana's K-12 pattern.

(5) When experience is required for a new certificate applicant, experience gained prior to certificate eligibility is not considered.

(6) Experience gained as a certified specialist may be considered for renewal of a teaching or administrator's certificate. Experience gained as a certified teacher or administrator may not be considered for renewal of a specialist certificate.

10.57.301 ENDORSEMENT INFORMATION (1) The only endorsements on Montana teaching certificates are those approved by the board of public education. A major or a minor or the equivalent in the endorsement area is required. (1) Board of Public Education Approval: The only endorsements on Montana teaching or specialist certificates are those approved by the board of public education. A major or a minor or the equivalent in the endorsement area is required.

(2) Certificates are endorsed by the superintendent of public instruction for the appropriate level(s) and area(s) of preparation based on the college program completed.

(3) Appropriate teaching areas acceptable for certificate endorsement include: social science, history, economics, sociology, geography, political science, economics-sociology, history-political science, English, speech-communication, dramatics, journalism, elementary education, library (K-12), speech-drama, French, Spanish, German, Russian, Latin, mathematics, science,

physical science, reading (K-12), physics, chemistry, biology, earth science, agriculture, industrial arts, home economics, distributive education, trade and industry, business education, business education with shorthand, music (K-12), art (K-12), physical education and health (K-12), health, guidance and counseling (K-12), special education (K-12), psychology.

(4) Appropriate administrative areas acceptable for certificate endorsement include: elementary principal, secondary principal, superintendent and supervisor.

(5) Appropriate specialist area acceptable for certificate endorsement is school psychologist

~~44~~ (6) Both elementary and secondary training are required for a K-12 endorsement in any approved endorsement area. After August 31, 1979, no endorsements other than K-12 will be initially given in library, special education, guidance and counseling, art, music, and health and physical education.

~~45~~ (7) Guidance endorsement is granted on the class 1, class 2, or class 5 teaching certificates for applicants who have completed approved programs in these areas. Such programs must include at least 30 quarter (20 semester) credits; the recommendation of the appropriate official is required.

~~46~~ (8) Special education endorsement is granted on the class 1, class 2, or class 5 teaching certificates for applicants who have completed approved programs in these areas. Such programs must include at least 30 quarter (20 semester) credits; the recommendation of the appropriate official is required.

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1) Term: 5 years - renewable.

(2) Basic education: Master's degree in administration or a related instructional field.

(3) Experience: 3 years teaching or the equivalent.

(4) Renewal: Verification of one year of successful experience or the equivalent in the area of endorsement.

(5) Reinstatement: 6 quarter (4 semester) credits or one-year experience or the equivalent earned within the 5-year period preceding application. (See guidelines for reinstatement of certificates allowed to lapse 15 years or more.)

(6) Superintendent endorsement: Eligibility for the class 1 or class 2 teaching certificate; and at least 24 graduate quarter (16 semester) credits or the equivalent in education, including the following:

(a) at least 12 graduate quarter (8 semester) credits, or the equivalent, in elementary education if the applicant does not qualify for elementary endorsement on the class 1 or class 2 teaching certificate; or, at least 12 graduate quarter (8 semester) credits, or the equivalent, in secondary education if the applicant does not qualify for secondary endorsement on the class 1 or class 2 teaching certificate; and,

(b) one or more graduate courses, or the equivalent, in each of the following: school finance, general school administration, school curriculum, and school supervision; and,

(c) a course in guidance or counseling, or the equivalent.

(7) Elementary principal endorsement: Eligibility for the class 1 or class 2 teaching certificate with elementary endorsement; and, at least 15 quarter (10 semester) credits, or the equivalent, in education, including the following:

(a) at least 8 graduate quarter (6 semester) credits, or the equivalent in elementary education; and,

(b) one or more graduate courses, or the equivalent, in general school administration and elementary school administration; and,

(c) at least one graduate course, or the equivalent, in elementary school curriculum or school supervision; and,

(d) a course in guidance or counseling, or the equivalent.

(8) Secondary principal endorsement: Eligibility for the class 1 or class 2 teaching certificate with secondary endorsement; and at least 15 quarter (10 semester) credits, or the equivalent in education, including the following:

(a) at least 8 graduate quarter (6 semester) credits, or the equivalent in secondary education; and,

(b) one or more graduate courses, or the equivalent, in general school administration and secondary school administration; and,

(c) at least one graduate course, or the equivalent, in secondary school curriculum or school supervision; and,

(d) a course in guidance or counseling, or the equivalent.

(9) Supervisor endorsement: This administrative endorsement is issued in specific fields such as math, music, special education, and guidance and counseling, or in general areas such as elementary education, secondary education and curriculum development. This endorsement may be issued to applicants who submit acceptable evidence of successful completion, at an accredited institution of higher learning, or a master's degree or the equivalent in the special area to be endorsed or in the appropriate professional programs for the general area endorsement. The applicants must meet eligibility requirements for a class 1 or class 2 teaching certificate endorsed in the field of specialization. The professional training required for this endorsement must include 15 graduate quarter (10 semester) credits in supervision, curriculum and methods in the fields to be endorsed. The recommendation of the appropriate official(s) is required.

10.57.404 CLASS 4 VOCATIONAL CERTIFICATE (1) Unless the teacher is certified with class 1, 2, or 5 specifically endorsed for vocational subjects, a class 4 is required for all vocational teachers who teach subjects for which high school credit is given, and who teach in post-high schools, vocational-technical schools, community colleges, or junior colleges where state certification of the teacher is a requirement for federal or state reimbursement of programs.

(2) The three types of class 4 certification are as follows:

- (a) Class 4A
  - (i) Eligibility for the class 4B certificate as specified below, and
  - (ii) bachelor's degree.
  - (iii) This certificate is issued for five years and is renewable on completion of one year of successful teaching experience in the area of endorsement during the five-year period plus the presentation of acceptable evidence of completion of six additional quarter credits in professional course work, or in technical study, or the equivalent in industrial experience as determined in consultation with the teacher's supervisor and/or the superintendent of public instruction.
  - (iv) Upon obtainment of the master's degree, this certificate is renewable on completion of one year of successful teaching experience in the area of endorsement.
- (b) Class 4B
  - (i) High school graduate or GED certificate
  - (ii) A teacher or secondary and postsecondary trade industrial education, technical education, and health occupations shall have had at least 10,000 hours (5 years) or work experience or apprenticeship training equal to 10,000 hours in the occupation or combination of occupations related to the specific field in which they are to teach. A teacher of other occupations requires a minimum of 2,000 hours of experience.
  - (iii) The following criteria will be considered in evaluating occupational work experience for trade and industrial education, technical education, and health occupations:
    - (aa) Each period of work experience must be ten weeks or more of continuous employment with an employer.
    - (ab) Experience and teaching experience gained while in the military will be evaluated on an individual basis.
    - (ac) Applicants may be certified with less than the minimum work experience upon satisfactory completion of an approved occupational competency test.
    - (ad) The applicant must meet state or local licensing standards when required in the occupations in which he or she seeks certification.
    - (ae) Graduates of approved 2-year vocational-technical programs may receive 4,000 hours (2 years) credit toward the experience requirement.
  - (iv) A teacher whose work experience varies from the requirements cited above may be approved by the office of the superintendent of public instruction. A report of these dispositions will be made to the board of public education.
  - (v) A program of college work or the equivalent including the following:
    - (aa) 15 quarter (10 semester) credits of college work in general background courses distributed in at least three of the following fields, selected by the student to strengthen specialized vocational areas: English, social studies, humanities, science, mathematics.
    - (ab) Completion of the following courses or their equivalent: principles and/or philosophy of vocational-technical

education, or job analysis, curriculum construction in vocational-technical education or job analysis, instructional materials and devices in vocational-technical education, teaching methods--vocational-technical subjects, vocational-technical organization and management, vocational guidance.

(ac) 10 credits or a minimum of 150 clock hours of student teaching. Two years successful teaching experience on a class 4C (temporary) certificate may be substituted for the student teaching requirement.

(vi) This certificate is issued for five years and is renewable on completion of one year of successful teaching experience in the area of endorsement during the five-year period plus the presentation of acceptable evidence of completion of six additional quarter credits in professional course work, or in technical study, or the equivalent in industrial experience as determined in consultation with the teacher's supervisor and/or the superintendent of public instruction.

(c) Class 4C  
(i) High school graduate or GED certificate  
(ii) Experience as required for the class 4B  
(iii) Issuance of the class 4C (temporary) certificate is dependent upon the applicant's signing a plan of professional intent leading to a class 4B certificate.

(iv) The class 4C (temporary) certificate is issued for five years and is not renewable.

10.57.405 CLASS 5 PROVISIONAL CERTIFICATE (1) Term: 5 years - not renewable. Exception: The specialist certificate will be a one-year, non-renewable certificate except for citizenship requirement provision which will be granted on the five-year, non-renewable basis.

(2) Basic education: Bachelor's degree.  
(3) A class 5 provisional certificate may be issued to applicants who have major preparation toward regular certification, but have minor discrepancies such as program deficiencies, lack of recent credits, or U.S. citizenship. It also may be approved for individuals in programs authorized by the superintendent of public instruction.

(4) Issuance of the class 5 certificate usually depends on the written recommendation of the appropriate official(s) of an approved institution with whom the applicant has outlined a plan of professional intent which commits the applicant to a program leading to regular certification.

(5) The recipient of a class 5 provisional certificate must be working on a planned program leading to the class 1, 2 or 3 certificate. On completion of the necessary credits, or the equivalent, the holder may apply for regular certification.

(6) Provisional elementary endorsement: Elementary endorsement is granted to applicants who submit acceptable evidence of a partially completed elementary education program, or a completed non-approved program, provided the following minimum requirements have been met:



- (a) bachelor's degree; and,
  - (b) a minimum of 90 quarter (60 semester) credits of academic preparatin in acceptable balance, in language arts and literature, history, government and related social science, mathematics, and any two of the following: art, music, foreign languages, speech, dramatics, library science, or health; and,
  - (c) professional preparation to include: human growth and development, the teaching of reading and/or language arts, social studies and arithmetic, and student teaching or appropriate intern experiences.
- (7) Provisional secondary endorsement: Secondary endorsement is granted to applicants who submit acceptable evidence of a partially completed secondary education program, or a completed non-approved secondary education program, provided the following minimum requirements have been met:
- (a) bachelor's degree; and,
  - (b) major preparation (at least 45 quarter or 30 semester credits) in an area commonly offered in the high school programs in Montana and approved by the board of public education for endorsement; and,
  - (c) 8 quarter (6 semester) credits in a planned program of professional teacher education, and admission to the secondary teacher education program of an accredited college or university.
- (8) Administrative endorsement: Class 5 certification with a plan of professional intent leading to class 3 (administrative) certification may be issued to applicants who within the last five years have been fully eligible for administrative certification endorsed in one of the general areas (elementary principal, secondary principal, superintendent or supervisor) but who may not meet course requirements for other general areas. In addition, the class 5 certificate may be approved for individuals in programs that have been authorized by the superintendent of public instruction. All administrators' certificates are based on a minimum of a master's degree in administration or related instructional field with state specified course work.
- (9) A person with a class 5 certificate, on completion of the necessary credits or the equivalent, may apply for class 1, 2 or 3 certification.
- (10) Two-year renewable class 5 certificates issued prior to September 1, 1978, will be renewed on fulfillment of requirements in force at the time of original issue.


3. These rules are proposed for amendment to provide a definition for the specialist programs, (Rule 10.57.102); clarify provisional certification of non-citizens and provide provisional certification for specialists (Rule 10.57.105); provide for specialist experience toward certificate renewal (Rule 10.57.204); specify administrative and specialist areas for certificate endorsement (Rule 10.57.301); and correct minor omissions in the original rules (Rules 10.57.403, 10.57.404 and 10.57.405).

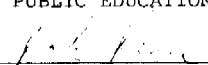
4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Chairman Marjorie W. King, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, at any time prior to

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 this request along with any written comments he has to Chairman Marjorie W. King, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10 percent or 25 or more persons who are directly affected by the proposed amendments, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 135 persons, based on approximately 1,350 active administrative certificates in Montana.

7. The authority of the agency to make the proposed amendments is based on Sections 20-2-121, 20-4-102; IMP, Sections 20-4-103, 20-4-105, 20-4-106 and 20-4-108, MCA.

  
MARJORIE W. KING, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:   
Assistant to the Board

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED AMENDMENT
of Rules 10.57.601, 10.57.602,) OF RULES 10.57.601, 10.57.602,	
10.57.603 and 10.57.604, re- ) 10.57.603 and 10.57.604.	
garding suspension and revoca-)	
tion of teacher certificates. ) NO PUBLIC HEARING CONTEMPLATED	

TO: All Interested Persons:

1. On August 16, 1980 the board of public education proposes to amend Rules 10.57.601, 10.57.602, 10.57.603 and 10.57.604, procedures to Guide the Hearing Requests for Revocation or Suspension of Teacher Certification.

2. The proposed amendment provides for adding the words or specialist after each reference to "teacher" in Sub-Chapter 6 of ARM found on Pages 10-846 through 10-848, as follows:

10.57.601 PRELIMINARY ACTION (1) Requests to suspend or revoke a teacher or specialist certificate shall be brought before the board of public education by only:

(a) an official action of the board of trustees of a local district for any teacher or specialist currently employed by that district or under contract or otherwise employed by that district at any time during the twelve months prior to the receipt by the board of public education of the suspension or revocation request; or

(b) the superintendent of public instruction for any other teacher or specialist.

(2) Upon receipt of such request, the board of public education shall implement an investigation to determine whether or not a substantial reason for suspension or revocation of the teacher or specialist certificate exists. This investigation shall include notifying the affected teacher or specialist of the charges against him and allowing him ten days to respond to those charges.

10.57.602 NOTICE AND OPPORTUNITY FOR HEARING UPON DETERMINATION THAT SUBSTANTIAL REASON EXISTS TO SUSPEND OR REVOKE TEACHER OR SPECIALIST CERTIFICATE (1) On the basis of the preliminary investigation, the board of public education shall determine whether or not a substantial reason exists to suspend or revoke the teacher or specialist certificate.

(a) If the board determines that no substantial reason exists to suspend or revoke the teacher or specialist certificate, the matter is ended.

(b) If the board determines that there is substantial reason to suspend or revoke the teacher or specialist certificate, the board shall provide notice of the pending action to the teacher or specialist and of the opportunity for the teacher or specialist to contest the pending action. Such notice shall include:

(i) a statement of the time, place and nature of the hearing;

- (ii) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (iii) a reference to the particular sections of the statutes and rules involved;
- (iv) a statement of the matters asserted;
- (v) a designation of who will hear the allegation;
- (vi) a provision advising parties of their right to be represented by counsel at the hearing.

(2) If the teacher does not notify the board of the teacher's or specialist's intention to contest pending action within 20 days of the service of notice, the board will suspend or revoke the teacher or specialist certificate at its next meeting.

(3) If the teacher or specialist does notify the board within 20 days of service of notice of the teacher's or specialist's intention to contest pending action, the matter will proceed to hearing.

10.57.603 HEARING IF TEACHER OR SPECIALIST INTENDS TO CONTEST PENDING ACTION (1) The board shall select one of the following methods for providing a hearing:

- (a) a hearing before the board of public education at a special or regular meeting of the board;
- (b) a hearing before board member(s) who will report to the board proposed findings of fact, proposed conclusions of law and a proposed order; or
- (c) a hearing before a hearing examiner appointed by the board of public education who will report to the board proposed findings of fact, proposed conclusions of law and a proposed order.

(2) At the time and place set in the notice to the teacher or specialist, the chairperson of the board of public education or designated board member(s) or an appointed hearing examiner shall conduct the hearing in accordance with Rules 9 through 21 of the Attorney General's model rules for hearing contested cases, as found in the Administrative Rules of Montana, Volume I, Part I, Chapter 6 (3-24-78).

10.57.604 AFTER HEARING BY MEMBER OF BOARD/HEARING EXAMINER/BOARD OF PUBLIC EDUCATION (1) After hearing by the board of public education, the board adopts findings of fact, conclusions of law and an order either suspending or revoking the teacher or specialist certificate or not suspending or revoking the teacher or specialist certificate. These are entered on the minutes of the board of public education and sent to the party adversely affected. When a certificate is suspended or revoked, the superintendent of public instruction shall notify certifying agencies in each of the other states.

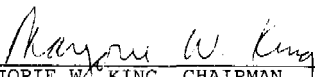
3. The rules are proposed to be amended in order to extend rule coverage to specialist certificates as provided in Section 20-4-102, MCA.

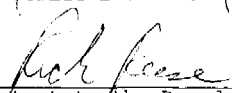
4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Chairman Marjorie W. King, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, at any time prior to August 14, 1980.

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 this request along with any written comments he has to Chairman Marjorie W. King, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than August 14, 1980.

6. If the agency receives requests for a public hearing on the proposed amendments from more than 10 percent or 25 or more persons who are directly affected by the proposed amendments, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 31 persons based on 311 persons who presently have valid approval as school psychologists in Montana.

7. The authority of the agency to make the proposed amendments is based on Section 20-4-102; IMP, Section 20-4-110, MCA.

  
MARJORIE W. KING, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:   
Assistant to the Board

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING
of Rule 10.57.501 regarding )	ON PROPOSED AMENDMENT OF
certification of school psych- )	RULE 10.57.501, Certification
ologists. )	of School Psychologists.

TO: All Interested Persons.

1. On August 11, 1980 at 1:30 p.m., a public hearing will be held in the Regent's Conference Room, 33 South Last Chance Gulch, Helena, Montana, to consider the amendment of Rule 10.57.501 relating to the Class 6 Specialist Certification for school psychologists.

2. The rule as proposed to be amended provides as follows:  
10.57.501 SCHOOL PSYCHOLOGISTS, SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS (1) Professionals such as school psychologists, social workers, nurses and speech and hearing therapists who are teaching in a classroom must have a teaching certificate appropriate for the level(s) and area(s) taught.

(2) Speech and hearing therapists engaged in school services in the public schools of Montana who issue grades or credits in the pupil's school program must be certified under the regularly established teacher certification requirements in addition to the certification requirements of the American Speech and Hearing Association. For related school services which do not involve credits or promotion, the superintendent of public instruction will recognize speech and hearing therapists licensed by the American Speech and Hearing Association on the basis of professional association standards on file in the office of the superintendent of public instruction.

(3) School psychologists. A professional serving as a school psychologist in the public schools must be certified with a specialist certificate.

(4) Class 6 (specialist) certificate. School psychologists.

(a) Term: 5 years, renewable

(b) Basic education. Master's degree or fifth year program in school psychology or equivalent related areas to include the following minimums.

(i) Must have 20 quarter credits in general education/psychology (graduate or undergraduate) training to include:

(aa) guidance

(ab) human growth and development

(ac) general psychology

(ad) educational psychology

(ae) learning theory

(ii) Educational program. The following specific courses are required as undergraduate or graduate:

(aa) exceptional children (must include special education)

(ab) curriculum development

(ac) diagnosis and remediation of reading

(ad) educational evaluation  
(iii) Psychological methods and techniques. The following are specific minimum requirements:  
(aa) individual intelligence testing - graduate  
(ab) group intelligence and achievement testing - graduate  
(ac) personality assessment - graduate  
(ad) interviewing and counseling - graduate  
(ae) behavior modification - graduate  
(af) school psychology practicum/internship (a minimum of 6 quarter hours of graduate credit or appropriate waiver)  
(ag) administration, role and function of school psychology.

(c) Renewal. Verification of one year of successful specialist experience or the equivalent, plus presentation of acceptable evidence of 6 additional graduate quarter credits of academic or equivalent inservice coursework.

(d) Reinstatement and recent training. For reinstatement of lapsed certificates or initial certification for applicants with training more than 5 but less than 15 years old, a Class 6 certificate cannot be issued until the required number of graduate credits are presented. Credits presented must have been earned within the five-year period preceding the date of application on the basis of 12 quarter credits for the first 5 years plus 6 quarter credits for each additional 5-year period since certification or original training. (Specific courses may be required for initial certification.) The applicant may, however, practice under a Class 5 provisional (specialist) certificate for one (1) year while completing the credit deficiency. For provisional certification a plan of intent outlining the specific courses required must be submitted to teacher certification in the office of public instruction. The plan of intent, a part of the application form which may be obtained from the office of public instruction, must be signed by the applicant, the college certification official where the coursework will be completed (if applicable) and a representative of the employing school district. A Class 5 is issued for one (1) year and is not renewable except for citizenship. (Non-citizen applicants should contact the office of public instruction for policies and procedures.)

(e) Renewal and reinstatement credits must supplement, strengthen and update the specialist preparation and must be graduate credit.

(5) Psychologists who have been approved for funding by the special education unit of the office of public instruction by December 31, 1980, and have had at least half-time employment during a school year between September 1, 1975, and May 31, 1981, can continue to serve as a school psychologist until 1984, when they must be certified with a Class 6 certificate.

(6) Psychologists who have been approved for funding by the special education unit of the office of public instruction by December 31, 1980, and have practiced continuously in Montana since September 1, 1975, under the Montana special education rules and regulations may receive Class 6 certification without additional training, upon application, commencing January 1, 1981.

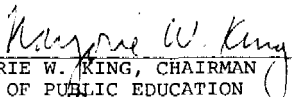
Those people who have received their certification under this provision must obtain credits for certificate renewal in their areas of deficiency.

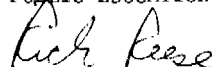
3. The rules are proposed to be amended to provide requirements for the issuance of specialist certificates for school psychologists.

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 Chairman Marjorie W. King, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than August 14, 1980.

5. Harriett Meloy, 33 South Last Chance Gulch, a member of the Board of Public Education, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment is based on Sections 20-2-121; IMP, Sections 20-4-102, 20-4-103 and 20-4-106, MCA.

  
MARJORIE W. KING, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

  
BY: Assistant to the Board



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

IN THE MATTER of the Proposed ) NOTICE OF PROPOSED AMENDMENT OF  
Amendment of ARM 40.12.814 ) ARM 40.12.814 FEES, GENERAL  
concerning fees. ) INITIAL AND ANNUAL RENEWAL FEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 16, 1980, the Board of Cosmetologists proposes to amend ARM 40.12.814 concerning fees.

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

"40.12.814 FEES, GENERAL INITIAL ~~AND ANNUAL~~ RENEWAL AND LATE RENEWAL FEES (1) Fees - General:

- (a) Student registration fee shall be \$3.50.
- (b) Temporary license fee shall be \$4.00.
- (c) Applicant for examination to practice shall pay \$20.00 plus \$6.00 operator license fee.
- (d) Applicant for examination to teach shall pay \$30.00 plus \$10 instructor license fee.
- (e) Applicant for itinerant license shall pay \$50.00 plus \$10.00 manager-operator license fee.
- (f) Applicant for reciprocal license shall pay \$50.00 plus \$6.00 operator license fee.

(g) Duplicate license fee shall be \$4.00.

(2) ~~Annual~~ Renewal Fees.

(a) All cosmetology licenses are to be renewed on or before December 31st of each year except the manager operator license which shall be subject to a 2-year renewal.

(b) Operator license fee shall be \$6.00.

(c) Manager operator license fee shall be ~~\$10.00~~ \$20.00 for a 2-year renewal and must be renewed on or before December 31st.

(i) New applicants for a manager operator license must apply for a 2-year license, however, the renewal must be made on December 31st of the second year following the original date of issue.

(d) Cosmetology salon license fee shall be \$10.00.

(e) Instructor license fee shall be \$10.00.

(f) Cosmetology school license fee shall be \$50.00.

(g) Advanced training license fee shall be \$50.00.

(h) Teacher-training license fee shall be \$50.00.

(3) Late renewals:

(ia) A fee of \$10.00 for each year shall be levied for late renewal of all licenses, in addition to the license fee.

(b) A fee of \$20.00 shall be levied for late renewal of manager operator licenses for each 2-year period of non-renewal, in addition to the license fee.

3. The board is proposing the amendment to implement section 37-31-322 (1) MCA to allow a 2-year license to be issued to manager operators and to clarify the late renewal fees.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Cosmetologists, Lalonde Building, Helena, Montana 59601 no later than August 14, 1980.

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 Cosmetologists, Lalonde Building, Helena, Montana 59601 no later than August 14, 1980.

6. If the board receives requests 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 by the proposed amendment has been determined to be 5.

7. The authority of the board to make the proposed amendment is based on section 37-31-203 MCA and implements section 37-31-322 MCA.

BOARD OF COSMETOLOGISTS  
JUNE BAKER, PRESIDENT

BY:

  
ED CARNEY, DIRECTOR  
DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, July 8, 1980.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adop- ) NOTICE OF PROPOSED AMENDMENTS  
tion of Rule 4.12.1806 ) OF 4.12.1806

TO: All interested persons

1. On April 24, 1980, the Montana Department of Agriculture published notice of a proposed amendment to rule 4.12.1806, concerning Inspection of All Fruits, Vegetables--Collection of Fees at page 1196 of the 1980 MAR, issue number 4.

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

RULE 4.12.1806 INSPECTION OF ALL FRUITS, VEGETABLES--  
COLLECTION OF FEES (1) All fruits and/or vegetables (with ex-  
ception of cherries, potatoes, and watermelons) - ~~2¢~~ 2.5¢ per  
unit up to a maximum fee charge of ~~\$15.00~~ \$20.00.  
Potatoes: Fresh shipments or lots, seed or tablestock  
(shipping point) 3¢ per cwt up to a maximum  
of \$45.00.  
Cherries: Fresh shipments ~~2¢~~ 2.5¢ per package or lug  
up to a maximum of ~~\$25.00~~ \$30.00.  
Watermelon: ~~3¢~~ 3.5¢ per hundred weight up to a maximum  
fee of ~~\$15.00~~ \$20.00.

Additional inspection fee charges include:


Potato Tags - Minimum 3¢/tag (commercial or tablestock).

Phytosanitary Certificate - Minimum of ~~\$1.50~~ \$3.00 and not  
to exceed ~~\$10.00~~ \$15.00.

State Lot Certificate - Minimum of ~~\$1.50~~ \$3.00 and not to ex-  
ceed ~~\$15.00~~ \$20.00.

3. No comments or testimonies were received.

The portion of the scheduled hearing related to an increase in potato inspection is being postponed to a later date that will be established as being mutually convenient, but prior to potato harvest this year.

  
W. Gordon McOmber, Director

Certified to the Secretary of State, July 7, 1980.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF)  
RULE 8-3.14(14)-S1440 (6), (b) AS) NOTICE OF AGENCY ACTION  
IT RELATES TO AMENDMENT OF THE ) ON RULE-MAKING PETITION  
DISTRIBUTOR FORMULA )

TO: All Interested Persons:

1. On May 6, 1980, the Montana Board of Milk Control published notice of a proposed amendment of rule 8-3.14(14)-S1440 (6), (b), relating to the economic formula used to calculate milk prices at page 1296 of the 1980 Montana Administrative Register, issue #9. (New rule number 3.7.301)

2. The agency has denied petitioner's request to amend the rule as proposed.

3. Several comments were received by proponents and opponents of the petitioned amendment to the rules.

At the public hearing, several representatives of milk processors appeared to testify in favor of the proposed rule change. Each argued that increased costs of doing business warranted a higher milk price and a formula which would more closely reflect the increased costs. Exhibits to that effect were presented by the Brown Swiss Milk Company, Inc., and Clover Leaf Dairy of Helena. Those arguments were rejected by the board for reasons stated herein. Several individuals representing themselves appeared to protest any increase in the price of milk due to its impact on low-income people and parents with children. State Representative Jerry Metcalf appeared representing himself and a number of his constituents citing statistical information and material from his own research in opposition to the proposed amendment. A representative of the Montana Dietetic Association appeared opposing the proposed change on the grounds of the need for the nutrients contained in milk for the health of young children in particular. The grounds of the proponents of the rule change were rejected for the following reasons:

(a) The board believes that the rule has not been in affect a sufficient period of time to demonstrate its effectiveness in guaranteeing its objectives.

(b) the board believes that the industry has its own remedies to the problems by raising its prices since the price set by the board is only a minimum;

(c) the board believes that insufficient data was presented by representatives of the industry to compel a change in the formula, particularly since no company financial statements had been submitted to show actual losses or to reflect the relationship of increased costs to income.

BY ORDER OF THE BOARD OF MILK  
CONTROL

*Curtis C. Cook*  
CURTIS C. COOK, Chairman  
Milk Control Board

By *K. M. Kelly*  
K. M. KELLY, Administrator and  
Executive Secretary

CERTIFIED TO THE SECRETARY OF STATE THIS 26<sup>th</sup> DAY OF June, 1980.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amend- ) NOTICE OF AMENDMENT OF  
ment of Rule 12-2.6(1)-S690 ) RULE 12-2.6(1)-S690  
relating to special licenses )

TO: All Interested Persons.

1. On May 15, 1980, the Montana Fish and Game Commission published notice of a proposed amendment of a rule relating to special licenses at page 1300 of the 1980 Montana Administrative Register, issue No. 9. (New number assigned 12.3.105)
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the repeal ) NOTICE OF REPEAL OF  
of Rule 12-2.22(1)-S2200 ) RULE 12-2.22(1)-S2200  
relating to migratory )  
waterfowl permits )

TO: All Interested Persons.

1. On May 15, 1980, the Montana Fish and Game Commission published notice of a proposed repeal of a rule relating to migratory waterfowl permits at page 1299 of the 1980 Montana Administrative Register, issue No. 9.
2. The agency has repealed the rule as proposed.
3. Comment was received from Senator William R. Lowe, Billings, voicing his concern on where the rules and "statutory authority elsewhere to render this rule unnecessary" might be.

Response: Upon review by our legal staff, it was determined that the scientific collector's permit found at Sec. 87-2-806, MCA, is the proper statutory authority for most of the activities covered by the migratory waterfowl permit and that under the authority of Sec. 87-3-403, MCA, the section used as authority for the administrative rule, the department may not have sufficient statutory authorization to have as comprehensive and as broad a rule as was initially adopted. Thus, the decision was made to remove the present rule from the administrative rules of the department.

Joseph J. Klabunde, Chairman  
Montana Fish and Game Commission

*Fletcher E. Newby*  
Fletcher E. Newby, Acting Secretary

Certified to Secretary of State June 23, 1980

Montana Administrative Register

13-7/17/80

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

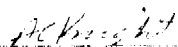
In the matter of the repeal	)	NOTICE OF REPEAL OF RULE
of rule 16-2.18(10)-S18050,	)	ARM 16-2.18(10)-S18050
setting standards for school	)	(School District
immunization programs	)	Immunization Program)

TO: All Interested Persons

1. On May 29, 1980, the Department of Health and Environmental Sciences published notice of the proposed repeal of rule 16-2.18(10)-S18050, setting standards for school immunization programs, at page 1523 of the 1980 Montana Administrative Register, issue number 10.

2. The department has repealed the rule as proposed.

3. No comments or testimony were received.

  
A. C. KNIGHT, M.D., Director

Certified to the Secretary of State July 8, 1980

BEFORE THE DEPARTMENT OF COMMUNITY AFFAIRS  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF THE ADOPTION
of rules implementing the )	OF RULES FOR PUBLIC
public participation positions)	PARTICIPATION
of state law. )	

TO: All Interested Persons

1. On May 29, 1980, the Department of Community Affairs published notice of a proposed adoption of rules for public participation in decisions made by the department at pages 1532 and 1533 of the 1980 Montana Administrative Register, issue no. 10.

2. The Department has adopted the rules as proposed. The following numbers are assigned: RULE I--22.2.201; RULE II --22.2.202; RULE III--22.2.203; RULE IV--22.2.204; RULE V--22.2.205.

3. No comments or testimony were received.

  
HAROLD A. FRYSLIE, DIRECTOR

Certified to the Secretary of State July 3, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF
of amendments to 24-3.9(2)- )	AMENDMENTS TO
P9076 relating to the )	24-3.9(2)-P9076,
administrative closure of a )	FAILURE OF CHARGING PARTY
complaint )	OR AGGREIVED PERSON TO COOPERATE
)	WITH DIVISION INVESTIGATION,
)	OR FAILURE TO PROCEED TO HEARING

TO: All Interested Persons.

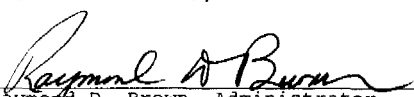
1. On April 10, 1980, the Commission published a notice of a public hearing regarding the adoption of amendments relating to the administrative closure of a complaint, appearing at page 1130 of the 1980 Montana Administrative Register, issue number 7. (Recodified number: 24.9.222)

2. The Commission has adopted the rule as proposed.

3. No comments or testimony were received at the public hearing held on May 14, 1980.

Karen S. Townsend, Chair

BY:

  
Raymond D. Brown, Administrator  
Human Rights Division

Certified to the Secretary of State July 8, 1980.



BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF
of amendments to 24-3.9(2)- )	AMENDMENTS TO 24-3.9(2)-P9114,
P9114 relating to pre-hearing)	PRE-HEARING; CONCILIATION
and conciliation procedures )	(Recodified number: 24.9.226)

TO: All Interested Persons.


1. On April 10, 1980, the Commission published a notice of a public hearing regarding the adoption of amendments relating to pre-hearing and conciliation procedures before the Human Rights Commission, appearing at page 1131 of the 1980 Montana Administrative Register, issue number 7.

2. The Commission has adopted the rule as proposed.

3. No comments or testimony were received at the public hearing held on May 14, 1980.

Karen S. Townsend, Chair

BY:

  
Raymond D. Brown, Administrator  
Human Rights Division

Certified to the Secretary of State July 8, 1980.

-2197-

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption)  
of amendments to 24-3.9(2)- )  
P9115 relating to discovery )  
procedures

NOTICE OF ADOPTION OF  
AMENDMENTS TO 24-3.9(2)-P9115,  
DISCOVERY

TO: All Interested Persons.

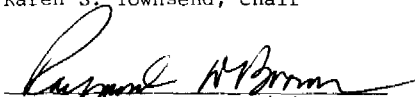
1. On April 10, 1980, the Commission published a notice of a public hearing regarding the adoption of amendments relating to discovery procedures before the Human Rights Commission, appearing at page 1132 of the 1980 Montana Administrative Register, issue number 7. (Recodified #:24.9.227)

2. The Commission has adopted the rule as proposed.

3. No comments or testimony were received at the public hearing held on May 14, 1980.

Karen S. Townsend, Chair

BY:

  
Raymond D. Brown, Administrator  
Human Rights Division

Certified to the Secretary of State July 8, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption)  
of amendments to 24-3.9(2)- )  
P9116, Rules 13A, 17, and 25 )  
relating to Certification for)  
Hearing, Pre-hearing Procedure, )  
and the Appeal of a Hearing )  
Examiner's Proposed Order )

NOTICE OF ADOPTION OF  
AMENDMENTS TO 24-3.9(2)-P9116,  
ADOPTION OF MODEL RULES  
WITH AMENDMENTS  
(Recodified #: 24.9.228)

TO: All Interested Persons.


1. On April 10, 1980, the Commission published a notice of public hearing regarding the adoption of amendments relating to Certification for Hearing, Pre-hearing Procedure, and the Appeal of a Hearing Examiner's Proposed Order, appearing at page 1134 of the 1980 Montana Administrative Register, issue number 7.

2. The Commission has adopted the rule as proposed.

3. No comments or testimony were received at the public hearing held on May 14, 1980.

Karen S. Townsend, Chair

BY:

  
Raymond D. Brown, Administrator  
Human Rights Division

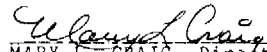
Certified to the Secretary of State July 8, 1980.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF RULE
AMENDMENT OF RULE	)	42-2.12(6)-S12015 (now re-
42-2.12(6)-S12015, relating	)	codified as ARM 42.13.101),
to compliance with laws and	)	relating to compliance with
rules by liquor licensees.	)	laws and rules by liquor
		licensees.

TO: All Interested Parties:

1. On May 29, 1980, the Department of Revenue published notice of the proposed amendment of Rule 42-2.12(6)-S12015 (now recodified as 42.13.101), relating to compliance with laws and rules by liquor licensees, at pages 1536 and 1537 of the 1980 Montana Administrative Register, Issue no. 10.
2. The Department has amended the rule as proposed.
3. No comments or testimony were received.

  
\_\_\_\_\_  
MARY C. CRAIG, Director  
Department of Revenue

Certified to the Secretary of State 7-7-80.

VOLUME NO. 38

OPINION NO. 83

PUBLIC EMPLOYEES - Hours of work.  
MONTANA CODES ANNOTATED - Sections 7-32-2111, 39-4-107 and  
39-3-405.

HELD: Local law enforcement agencies may, with the consent of the affected employees, schedule a forty-hour work week consisting of four consecutive ten-hour days.

26 June 1980

Harold Hanser, Esq.  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

May local law enforcement agencies, with the consent of their employees, schedule a forty-hour workweek consisting of four consecutive ten-hour days?

Your question involves the application of section 39-4-107, MCA, which provides:

(1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, [or] the state government.... \*\*\* In cases of emergency when life or property is in imminent danger this subsection does not apply.

(2) For firefighters in cities of the first and second class, a workweek consists of a maximum of 40 hours during a 5-day week.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees ..., establish a 40-hour workweek consisting of four consecutive 10-hour days. \*\*\*

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section is guilty of a misdemeanor....

Early cases held that this section constituted an absolute penal prohibition against any work in excess of eight-hours in one day. Melville v. Butte Balaclava Copper Co., 47 Mont. 1, 130 P. 441 (1913); State v. Hughes, 38 Mont. 468, 100 P. 610 (1909); State v. Livingston Concrete Building and Manufacturing Co., 34 Mont. 570, 87 P. 980 (1906). The question is whether this turn-of-the-century interpretation of the statute survives more recent court decisions, legislative pronouncements, and modern policy consideration.

Two decisions of the Montana Supreme Court cast doubt on the continuing validity of the construction of the predecessor of section 39-4-107, MCA, adopted in these early cases. In Butte Miner's Union v. Anaconda Copper Mining Co., 112 Mont. 418, 118 P.2d 148 (1941), the Court considered the interaction of the eight-hour workday statute and the overtime provisions of the federal Fair Labor Standards Act (FLSA). The FLSA established a forty-hour maximum workweek and provided for the payment of overtime. The Montana Supreme Court held that there was no inconsistency between the maximum hour and overtime provisions of the FLSA and the eight-hour day provisions of the then-existing version of section 39-4-107, MCA. This holding implicitly recognizes that the eight-hour day statute does not bar an employee from working more than eight hours in a day if he is compensated for the excess under an applicable overtime statute. In Glick v. Department of Institutions, 162 Mont. 82, 509 P.2d 1 (1973), the Court reiterated the view expressed in Butte Miner's Union by recognizing that certain state employees within the purview of the eight-hour day statute could work in excess of eight hours and be compensated under the overtime provisions of the FLSA.

The FLSA no longer applies to state, county, or municipal employees National League of Cities v. Usery, 426 U.S. 833 (1976). In 37 OP. ATT'Y GEN. NO. 16 (1977), I held that applicable statutes and administrative regulations require payment of overtime for hours in excess of forty worked in any week, relying on Glick, section 39-3-405, MCA, and the regulations codified at 24-3.14BII(38)-S14290 of the Administrative Rules of Montana. I continue to adhere to this holding. See also section 7-32-211, MCA. The cited opinion also holds that counties may not schedule employees other than bridge and road maintenance workers to work a forty-hour week consisting of four consecutive ten-hour days. I have reconsidered this holding and find it to be incorrect. In Glick and Butte Miner's the Montana Supreme

Court implicitly held that section 39-4-107, MCA, is not an absolute prohibition against working more than eight hours in one day, but rather is merely descriptive of the length of a work-day under normal conditions. The cases recognize that an employee may work more than eight hours per day if he is compensated for hours in excess of forty worked in any week under section 39-3-405, MCA. These holdings appear to nullify the plain meaning of the eight-hour day statute. However, they constitute the definitive construction of the statute by the Montana Supreme Court, and I am therefore bound to follow them.

In 37 OP. ATT'Y GEN. NO. 16 I held that a county could not schedule four ten-hour days for all employees on the basis of a 1975 amendment which explicitly permitted counties to schedule road and bridge workers on a four-day week consisting of ten-hour days, reasoning that the express mention of such authority only for road and bridge crews necessarily excluded such authority for all other state workers. See Stephens v. City of Great Falls, 119 Mont. 368, 175 P.2d 408 (1946). This result is flatly inconsistent with the Court's reasoning in Glick, which implicitly recognized that the Department of Institutions had the authority to structure working hours for its employees in schedules other than the traditional work week consisting of five eight-hour days. If the rule of construction applied in my prior opinions was the correct one, the result in Glick could not have been reached. I can only conclude that under Glick state agencies and local governments may permit their workers to work four ten-hour days per week. 37 OP. ATT'Y GEN. NO. 16 is overruled to the extent it is inconsistent with this opinion.

It would be appropriate for the Legislature to amend the strict language of section 39-4-107, MCA, to make it compatible with current employment practices and court interpretations.

THEREFORE, IT IS MY OPINION:

Local law enforcement agencies may, with the consent of the affected employees, schedule a forty-hour work week consisting of four consecutive ten-hour days.

Very truly yours,

  
MIKE GREELEY  
Attorney General

VOLUME NO. 38

OPINION NO. 84

COUNTY ASSESSOR - Office space;

COUNTY GOVERNMENT - Provision of office space for county assessor and staff;

DEPARTMENT OF REVENUE - Provision of office space for county assessor and staff.

MONTANA CODE ANNOTATED - Section 15-8-102(2).

LAWS OF MONTANA (1979) - House Bill 493.

HELD: The county commissioners are required to pay for office space for the Department of Revenue if space is reasonably available in the county courthouse or other government buildings. If such space is not reasonably available and must be contracted for, then the Department of Revenue must pay the cost.

27 June 1980

Thomas C. Honzel, Esq.  
Deputy County Attorney  
Lewis & Clark County  
Courthouse Building  
Helena, Montana 59601

Dear Mr. Honzel:

You have requested an opinion whether county commissioners are required to provide office space in a non-county building to the Department of Revenue, at no cost to the State, when such space is not reasonably available in the courthouse.

Your question involves the interaction of apparently conflicting statutory provisions. Section 15-8-102(2), MCA, provides:

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Montana Administrative Register



COUNTY ASSESSOR AS AGENT OF THE DEPARTMENT -  
COUNTIES TO FURNISH OFFICE SPACE. \*\*\*

(2) The county commissioners of the various counties shall provide existing office space in the county courthouse for use by the county assessor, his deputies and staff, and the state appraiser and staff, if such space is reasonably available. If such space is not reasonably available in the courthouse and the same must be contracted for, the department shall pay the cost thereof. Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department.

(Emphasis added.) During the 1979 legislative session, HB 914 was introduced which would have amended section 15-8-102, MCA, to require counties to provide office space whether in the courthouse or not. That bill was defeated. However, House Bill 493, the department's appropriation bill, provides:

The county commissioners of the various counties and the governing bodies of local government units shall provide office space in county courthouses or government office buildings to the department of revenue of the state for its use at no cost to the state. The department is not liable for any expenses in connection with the use of such space, including but not limited to rent, utilities, or janitorial services. The department shall use such space as offices for its agents: the county assessor, appraiser, and their respective staffs.

(Emphasis added.)

A general appropriation bill, although not codified, is treated the same as any other statute for purposes of resolving statutory conflict. See, e.g., Teamsters Local No. 45 v. Liquor Control Board, 155 Mont. 300, 471 P.2d 541 (1970). Your question therefore requires application of principles of statutory construction to understand the legislative intent of the two statutes.

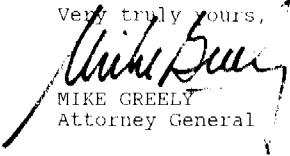
Before a subsequent enactment can repeal an earlier provision by implication, the two statutes must be wholly inconsistent, incompatible and not capable of being reconciled. State ex rel. Jenkins, v. Carish Theatres, Inc., 172 Mont. 453, 564 P.2d 1316 (1977); Fletcher v. Paige, 124 Mont. 114, 119, 220 P.2d 484; 19 A.L.R.2d 1108 (1950). Both statutes must be given effect if possible. State ex rel. Ronish v. School District No. 1, 136 Mont. 453, 348 P.2d 797, 78 A.L.R.2d 1012 (1960).

The two statutes quoted above can be read together. Section 15-8-102(2) requires the county commissioners to provide office space in the courthouse if space is reasonably available. House Bill 483 requires the counties to provide office space in the courthouse but allows for office space in other government buildings, such as the Helena city-county building, to be provided at county expense. The department is not liable for expenses for use of such space, i.e., office space in a government building. House Bill 483 does not address the situation where office space is not reasonably available in a government building. By reading the statutes together I conclude that the Department of Revenue must contract and pay for office space if space is not reasonably available in the courthouse or other government buildings.

THEREFORE, IT IS MY OPINION:

The county commissioners are required to pay for office space for the Department of Revenue if space is reasonably available in the county courthouse or other government buildings. If such space is not reasonably available and must be contracted for, then the Department of revenue must pay the cost.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 38

OPINION NO. 85

COUNTY COMMISSIONERS - Supervisory powers over county officers;  
COUNTY OFFICERS AND EMPLOYEES - Supervisory powers of county commissioners over elected county officers;  
MONTANA CODE ANNOTATED - Sections 7-4-2110, 7-4-2203, 7-6-2114.

- HELD: 1. The supervisory power of the county commissioners under section 7-4-2110, MCA, extends to all county executive officers enumerated in section 7-4-2203, MCA.
2. The county commissioners, in the exercise of their statutory supervisory control over county officers, may assure that the officers fulfill their statutory duties, but may not assume control over the manner in which those duties are performed.

30 June 1980

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 questions:

1. Does section 7-4-2110, MCA, grant to the board of county commissioners supervisory power over all public officials who hold county office?
2. What are the limitations on the exercise of the supervisory power granted in section 7-4-2110, MCA?

Your first question is answered by the statute. Section 7-4-2110, MCA provides:

The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to:

- (1) supervise the official conduct of all county officers...;
- (2) see that they faithfully perform their duties;  
[and]
- (3) direct prosecutions for delinquencies \*\*\*.

(Emphasis added.)

I am aware of no authority for the proposition that the phrase "all county officers" means anything other than what it says, although a plausible argument can be made that the doctrine of separation of powers would prevent the board from exercising supervision over a judicial officer such as a justice of the peace. See Board of Commissioners v. Eleventh Judicial District Court, Mont., 597 P.2d 728 (1979). With this possible exception, I conclude that section 7-4-2110, MCA grants supervisory power over all county executive officers enumerated in section 7-4-2203, MCA.

The Montana Supreme Court has not had occasion to speak on the extent of the supervisory power granted in section 7-4-2110, MCA. However, similar provisions have been enacted in other states, and decisions construing these provisions provide some guidance. Heller v. County Board, 71 Ill.App.3d 31, 388 N.E.2d 881 (1979) is particularly instructive. Heller was the supervisor of assessments for Jackson County. He brought an action for injunction to prevent the county board from interfering with the operation of his office by attempting to alter his duties, establishing personnel policies, hiring employees and purchasing supplies. The trial court entered judgment for Heller, and the Court of Appeals affirmed, holding that the general supervisory powers of the board were insufficient to allow the board to take over the day-to-day operation of Heller's office. The court stated:

The county board has both executive and legislative function in its relationship to county officers. It has the power and responsibility to create salary classifications of general applicability for all county offices, elected or appointed, to the extent that it can require certain proficiencies for clerks and deputies by establishing salary schedules, may establish hours of work and other general guidelines and conditions of employment. It cannot, however, adopt

organizational charts and job classifications the effect of which is to divest the supervisor of assessments of the duties and functions vested in him by law enacted by the General Assembly nor may the county board perform his duties or direct the manner in which they shall be performed.

388 N.E.2d at 885.

Heller expresses what appears to be the general rule -- that the board may ensure that an officer performs his statutory duty, but may not require that that duty be performed in a particular manner, not specified by statute. Thus, in Hicks v. Orange County Board of Supervisors, 69 Cal.App.3d 228, 138 Cal.Rptr. 101 (1977), the California Court of Appeals held that the board could not require a district attorney to perform his investigative function through the office of the sheriff-coroner. The same court held in People v. Langdon, 54 Cal.App.3d 384, 126 Cal. Rptr. 575 (1976) that the board could not compel the county clerk to draw a jury panel from a particular geographic subdivision of the county.

The view expressed in Heller, Hicks, and Langdon is consistent with the view expressed by the Montana Supreme Court in Simpson v. Silver Bow County, 87 Mont. 83, 285 P. 195 (1930). The question in Simpson was whether the county could employ a "tax ferret" to search out and identify taxable property not found on the assessment rolls. The court stated:

It is beyond the power of the county board to enter into a contract for services, the performance of which is cast upon a different official or board, and which has the effect of relieving the other of a duty imposed by law, or of usurping the functions of such other officer.

87 Mont. at 91-2.

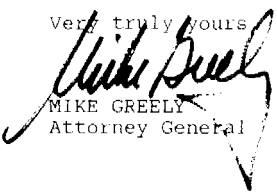
The court found that the board, acting as county board of equalization, was empowered to assure that all taxable property in the county was reflected on the assessment rolls, and that the county assessor's powers were therefore subordinate by statute to those of the board. The court held that the employment by the board of a tax ferret was not a usurpation of the assessor's power.

It is clear that the supervisory power of the board will not allow it to take over the day-to-day functions assigned by statute to another officer. However, the statute explicitly grants to the board the power to "see that [the officers] faithfully perform their duties." To this end, the board may examine the operations of the various officers to assure that mandatory duties are performed. See Pillsbury v. Board of Chosen Freeholders, 133 N.J. Super 526, 337 A.2d 632, 641 (1975). This power is explicitly recognized by statute in regard to some officers. See, e.g., section 7-6-2114 MCA, (county treasurer must allow board to examine books and accounts). If the board finds that the mandatory duty is not being performed, it must take appropriate steps, such as an action in the nature of mandamus, to assure that the duty is performed.

THEREFORE IT IS MY OPINION:

1. The supervisory power of the county commissioners under section 7-4-2110, MCA, extends to all county executive officers enumerated in section 7-4-2203, MCA.
2. The county commissioners, in the exercise of their statutory supervisory control over county officers, may assure that the officers fulfill their statutory duties, but may not assume control over the manner in which those duties are performed.

Very truly yours

  
MIKE GREELY  
Attorney General

VOLUME NO. 38

OPINION NO. 86

PUBLIC FUNDS - Use of the transportation budget funds by school districts; use of general funds by school districts to finance "activity" buses;

SCHOOL DISTRICTS - Use of transportation budget funds for busing between pupils' legal residences and schools; use of general funds for expenses for maintenance, upkeep, repair, and salaries of bus drivers of "activity" buses;

TRANSPORTATION, PUBLIC - Use of the transportation budget funds by school districts;

MONTANA CODE ANNOTATED - Sections 20-9-102, 20-9-103, 20-9-208, 20-10-101, 20-10-112, 20-10-131, 20-10-132, 20-10-143 and 20-10-147.

- HELD: 1. The bus depreciation fund allowed under section 20-10-147, MCA, merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses.
2. School district trustees must conform their budget to the accounting procedure prescribed by the state Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund.

2 July 1980

Gordon T. White, Esq.  
Valley County Attorney  
P.O. Box 111  
Glasgow, Montana 59230

Dear Mr. White:

You have requested my opinion concerning the following questions:

1. Does section 20-10-147, MCA, which enables "school districts to establish a bus depreciation reserve fund" imply that the expenses for maintenance, upkeep, repair, and salaries of bus drivers of "activity buses" be expended from the transportation budget?

2. Does the "School Finance and Statistics Reference Manual" under Accounting Code 13 published by the state Superintendent of Public Instruction have the force of law in determining proper accounting expenditures for maintenance, upkeep, repair, and drivers' salaries of "activity" buses?

Your first question concerns the extent to which the transportation fund budget, established by Title 20, chapter 10 of the Montana Code Annotated, covers expenses for the operation of school buses. The specific problem raised is the proper accounting expenditures for operation of buses for student activities.

Section 20-10-143, MCA, gives the trustees of a school district broad power in financing a transportation program in their district. The transportation fund budget must include an adequate amount "to finance the administration, operation or maintenance of the transportation program of the district, as determined by the trustees."

However, section 20-10-101(1), MCA, limits the meaning of the term "transportation" to conveyance of pupils between their legal residences and schools, unless the context of the statute clearly indicates otherwise. Therefore, by statutory definition, "transportation" does not include conveyance of pupils for student functions and activities.

The term "transportation program" is also used in other sections in this chapter, such as sections 20-10-131 and 20-10-132, MCA, to refer to the routing or individual transportation system which a district has implemented to satisfy the transportation provisions of this part. Rather than indicating that a separate and more inclusive meaning for the term in section 20-10-143, MCA, was intended, the context clearly indicates that the narrow definition of "transportation" was intended to carry throughout the transportation budget part.

Within the same part, section 20-10-147, MCA, enables the trustees of a school district to establish a bus depreciation reserve fund. The reserve fund, however, expressly may be used only to cover costs of replacement of a bus or two-way radio which has been used for transportation as defined in this chapter, or for conveyance of pupils to or from school activities. The purposes of the reserve fund are to spread the cost of replacing buses and radios over the lifetime of the equipment and to ensure that funds are



available when needed for replacement. 37 OP. ATT'Y GEN. NO. 153 (1979). Section 20-10-147, MCA, does not in any way provide for payment of expenses for maintenance, repair, upkeep, or salaries for bus drivers of any buses or equipment.

Subsection (4) of the same statute further requires trustees of a district to submit to the electors any proposal to transfer part or all of the bus depreciation cash balance to any other fund. The reserve fund prohibits use or transfer of the funds for any purpose beyond replacement of buses or two-way radios without taxpayer approval.

The second question concerns the legal effect of Accounting Code 13 published by the office of the superintendent of public instruction. Section 20-10-112, MCA, sets out the duties of the superintendent under the transportation budget title. The superintendent is empowered to prescribe rules and forms for the implementation and administration of each district's transportation policies and to disburse state transportation reimbursement according to district policies and provisions of law. Since the transportation title does not apply to buses used for student activities, these statutory provisions do not determine a source for payment of expenses incurred by operation of activity buses.

The superintendent is authorized under section 20-9-102, MCA, to supervise school budgeting procedure and to establish rules necessary to secure compliance with school budgeting laws. The superintendent is thereby given broad supervisory power to approve or adjust the administrative form of district budgeting within the guidelines of express provisions of law.

Section 20-9-103, MCA, requires the superintendent to prescribe the format of the school budget form, and to provide for proper school budgeting procedures. The expenses for activity buses which are sponsored or supervised by the school district are budgeted to the general fund, itemized under section 01-00-0900 of Accounting Code 13 of "School Finance and Statistics Reference Manual" published by the office of the superintendent. Under this code section, activity buses are designated "Student Body and Auxiliary Services," such as interscholastic athletics, entertainments, publications, clubs and bands, that are managed by the student body under adult supervision and are not part of the regular instructional program.

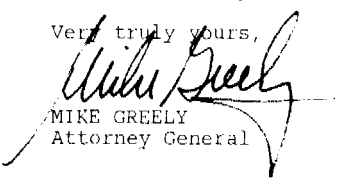
The form provided by the superintendent for the year beginning July 1, 1979, requires a separate accounting for line items within the general fund (Code 01) such as student body and auxiliary services, and separate accountings for line items within the transportation fund (Code 02) and bus depreciation reserve fund (Code 03). Under the bus depreciation reserve fund, the only expenditure item allowed is the purchase of a replacement bus or radio.

Under section 20-9-208, MCA, trustees of any district are authorized to transfer any or all of the excess appropriation amount of one line item to any other appropriation item of the same budgeted fund. Transfers, however, cannot be made between different budgeted funds of the same district. Therefore, trustees may transfer appropriations between line items within the general fund. However, use of the transportation fund budget (Code 02) to meet expenses incurred under a line item of the general fund (Code 01) is prohibited.

THEREFORE, IT IS MY OPINION:

1. The bus depreciation fund allowed under section 20-10-147, MCA, merely provides for replacement of transportation and activity buses and does not expand use of transportation fund budget to pay expenses for operation of activity buses.
2. School district trustees must conform their budget to the accounting procedure prescribed by the state Superintendent of Public Instruction, which requires itemizing of the expenses of activity buses under the general fund rather than the transportation fund.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 38

OPINION NO. 87

FIRE DISTRICTS - Equipment purchases;  
FIRE DISTRICTS - Finances; authority to obtain loans;  
COUNTIES - Rural fire districts; authority to obtain loans;  
MONTANA CODE ANNOTATED - Sections 7-33-2105(2), 7-33-2109.

HELD: Fire district trustees have authority to enter into loan agreements to finance the acquisition of equipment and facilities needed by the district for fire protection.

3 July 1980

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

Dear Mr. Flaherty:

You have requested my opinion concerning certain methods of financing the acquisition of a fire truck and a storage facility by a rural fire district established pursuant to Title 7, chapter 33, part 21, MCA. Specifically, you have asked whether the commissioners of the county involved or the trustees of the district have the authority to issue bonds or obtain a loan for this purpose.

Where powers of a local government unit are in question, the initial inquiry is whether there is an express grant of such powers. If not, the inquiry becomes whether there is a grant by necessary implication or whether the power is indispensable to the accomplishment of the object of the corporation. Deitrich v. City of Deer Lodge, 124 Mont. 8, 13, 218 P.2d 708 (1950). This test is regularly applied where powers of cities and counties are in question. See, DeLong v. Downes, \_\_\_ Mont. \_\_\_, 573 P.2d 160, 162 (1977), and cases cited therein. In my opinion the test is applicable here as well, even though a fire district is not a local government unit. (Fire districts are political subdivisions of the counties in which they are located See, 35 OP. ATT'Y GEN. NO. 71 (1974)).

The applicable statutes fall short of expressly granting county commissioners or fire district trustees the authority to either issue bonds on the credit of the district or obtain a loan on behalf of the district to acquire equipment and facilities. Prior to 1953, county commissioners, as ex-officio directors of fire districts, were authorized to issue such bonds, but the legislature terminated the authority by repealing the statutes that permitted the issuance of fire district bonds. See, chapter 75, section 3, L.1953. The legislature's action effectively foreclosed the use of bonds for fire district purposes.

The remaining question is whether a loan may be obtained on behalf of the district, to be repaid from assessments levied upon property within the district. Since there is no express grant of this kind of authority, the question turns on whether it arises by necessary implication from expressly granted powers or is indispensable to the accomplishment of the object of a fire district. There is a presumption against the exercise of implied authority. DeLong v. Downes, supra, 573 P.2d at 162. However, in my opinion the requisite conditions exist and accordingly I conclude that a fire district has implied authority to obtain a loan for fire district purposes.

A fire district's sole object is to provide fire protection within the district. To this end the trustees have been given express authority "to provide adequate and standard firefighting apparatus, equipment, housing, and facilities for the protection of the district." Section 7-33-2105(2), MCA. The legislature has not prescribed a specific mode of exercising the authority conferred under 7-33-2105(2). It has simply authorized county commissioners to levy a special tax upon property within the district, after submission of a levy by the trustees, as the means of generating revenue for the district. Significantly, the legislature has specified that such special tax may be levied "for the purpose of buying or maintaining fire protection facilities and apparatus for such district." Section 7-33-2109, MCA

Prior opinions of the Attorney General have recognized the necessity of financing arrangements by which fire protection equipment and facilities can be acquired. The first such opinion, 26 OP. ATT'Y GEN. NO. 84 (1956), found trustees of a newly formed fire district with no cash on hand had implied authority to enter into conditional sales contracts to purchase necessary equipment. That opinion was endorsed in 36 OP. ATT'Y GEN. NO. 73 (1976). The earlier opinion was

based on the premise that the district's purpose could not be fulfilled without resort to the proposed financing arrangement. I agree that a fire district has implied authority to secure financing for the equipment and facilities it needs to provide adequate fire protection where the equipment and facilities cannot be acquired otherwise. I see no reason to confine this authority to conditional sales contracts where an alternate arrangement, such as a direct loan, may be more appropriate as well as more economical.

I note both of the opinions referred to above conclude that fire district trustees are not bound by the bid solicitation requirements or installment contract term limitations which apply to county contracts under sections 7-5-2301 and 7-5-2306, MCA. Both opinions did advise compliance with those provisions, however, and I concur.

I have concluded that the authority of a fire district to obtain a loan to finance the acquisition of needed equipment and facilities and to repay the loan from assessments levied annually on property within the district is an indispensable power that may reasonably be implied.

THEREFORE, IT IS MY OPINION THAT:

Fire district trustees have authority to enter into loan agreements to finance the acquisition of equipment and facilities needed by the district for fire protection.

Very truly yours,



MIKE GREELY  
Attorney General