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**RESERVE**

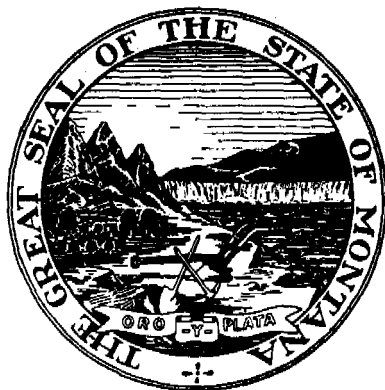
# **MONTANA ADMINISTRATIVE REGISTER**

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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.

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53-4-241	46.10.508	2772
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53-6-101	46.12.102	2776
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53-6-113	Rules I through III (SRS)	2393
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53-6-113	46.12.556 and 557	2770
53-6-113	46.12.1201 through 1206	2768
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53-6-141	Rules I and II (SRS)	2776
53-6-141	Rules I through III (SRS)	2393
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53-6-141	46.12.556 and 557	2770
53-6-141	46.12.1201 through 1206	2768
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<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
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75-10-214 - 225	16.44.401, 402 and 403	2446
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<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL
of rules ARM 2.5.112 and	)	OF RULES ARM 2.5.112 and
2.5.113, specifying the	)	2.5.113, concerning adminis-
administrative procedures to	)	trative procedures to resolve
be followed in resolving dis-	)	putes arising out of state
putes arising out of state	)	purchase contracts
purchase contracts	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 18, 1981, the Department of Administration proposes to repeal rules ARM 2.5.112 NONPERFORMANCE BY VENDOR and 2.5.113 NONPERFORMANCE BY STATE, specifying the administrative procedures to be followed in resolving disputes arising out of state purchase contracts.

2. The rules proposed to be repealed are on pages 2-144 and 2-145 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules because the rules have caused confusion among vendors and state agencies alike, because the rules have in some instances actually delayed resolution of purchase contract disputes, and because the rules appear to be unnecessary.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeals in writing to John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59601, no later than February 16, 1981.

5. If a person who is directly affected by the proposed repeal of rules ARM 2.5.112 and 2.5.113 wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59601, no later than February 16, 1981.

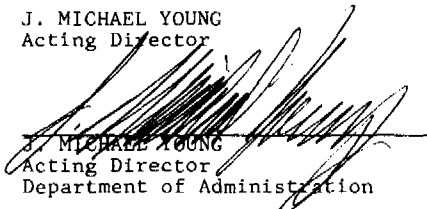
6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons directly affected; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons who will be directly affected has been determined to be 300 persons based

on the approximate 3000 vendors having purchase contracts with the state.

7. The authority of the department to make the proposed repeals is based on section 18-1-402, MCA, and the rules implement section 18-1-402, MCA.

J. MICHAEL YOUNG  
Acting Director

By:

  
~~J. MICHAEL YOUNG~~  
Acting Director  
Department of Administration

Certified to the Secretary of State 12-30-80.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING ON  
of Rule 12.6.901 relating to ) PROPOSED AMENDMENT OF RULE  
water safety regulations ) 12.6.901 -- WATER SAFETY  
 ) REGULATIONS

TO: All Interested Persons.

1. On February 18, 1981, at 7:00 p.m., a public hearing will be held in the commission room of the Department of Fish, Wildlife, and Parks building, 1420 East 6 Avenue, Helena, Montana, to consider the amendment of Rule 12.6.901.

2. The proposed amendment would prohibit water skiing on a certain area of the Missouri River and include additional areas in the no wake speed section of the rule.

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

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) The following waters are closed to use of any motor-propelled water craft except in case of use for official patrol, search and rescue craft, or for scientific purposes:

Beaverhead County:	Big Hole River
Big Horn County:	Arapoosh access area
Cascade County:	Smith River
Custer County:	Branum Pond
Deer Lodge County:	Big Hole River
Granite County:	Bear Mouth rest area pond
Hill County:	Bearpaw Lake
Jefferson County:	Park Lake
Lewis & Clark County:	Wood Lake
Madison County:	Big Hole River
Meagher County:	Forest Lake - Smith River
Missoula County:	Frenchtown Pond - Harpers Lake
Ravalli County:	Twin Lakes
Richland County:	Gartside Reservoir
Silver Bow County:	Big Hole River
Toole County:	Axtman, Feys, and Henry Reservoirs - Fitzpatrick Lake

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horsepower, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(i) all rivers and streams in the following counties east of the continental divide:

Silver Bow                      Gallatin-exception: Missouri downriver  
Beaverhead                      from Headwaters state park  
Jefferson                      Park-exception: Yellowstone downriver  
Madison                      from I-90 bridge at Livingston  
Broadwater-exception: Missouri down-  
river from the Broadwater-Gallatin  
county line

(ii) other waters of the state as follows:

Hill County:                      Beaver Creek Reservoir  
Fallon County:                      South Sandstone Reservoir

(c) The following waters are limited to a controlled  
no wake speed. No wake speed is defined as a speed whereby  
there is no "white" water in the track or path of the vessel  
or in created waves immediate to the vessel:

Broadwater County:              (A) on Canyon Ferry Reservoir:  
White Earth and Goose Bay,  
within 300 feet of dock or  
as buoyed;

Carbon County:                  (A) on Cooney Reservoir: all of  
Willow Creek arm as buoyed;

Fergus County:                  (A) upper & lower Carter Ponds;  
(B) Crystal Lake 5:00 a.m. to  
10:00 a.m. and 7:00 p.m. to  
11:00 p.m. each day;

Flathead County:                (A) on Flathead Lake:  
Bigfork Bay and Beaver Lake  
(near Whitefish) 5:00 a.m.  
to 10:00 a.m. and 7:00 p.m.  
to 11:00 p.m. each day;

Lewis & Clark County:          (A) on Canyon Ferry Reservoir:  
Yacht Basin, Cave Bay, Little  
Hellgate, Magpie Bay & Carp  
Bay within 300 feet of dock  
or as buoyed;  
(B) on Hauser Reservoir: Lakeside  
marina and Black Sandy beach  
within 300 feet of the docks  
or as buoyed;  
(C) on upper Holter Lake: Gates  
of Mountains marina within  
300 feet of docks or as buoyed;  
(D) on Holter Lake: bureau of land  
management boat landing as  
buoyed, Juniper Bay, Log Gulch,  
Departure Point, Merriweather  
Camp, and Holter Lake lodge  
docks.

Lincoln County: (A) Savage Lake during the hours of  
5:00 a.m. to 10:00 a.m. and from  
7:00 p.m. to 11:00 p.m. each  
day;

Missoula County: (A) Clearwater River from Camp Pax-  
son swim dock downstream to  
first bridge;  
(B) on Holland Lake: Holland Lake  
lodge and the Bay Loop camp-  
ground within 300 feet or as  
buoyed.

(d) The following waters are closed to water skiing:

Lewis & Clark County: (A) from the mouth of the canyon  
on upper Holter Lake to Gates  
of Mountains near Mann Gulch.

(d)(e) On the following waters all boats pulling, taking  
off with, and landing water skiers will travel in a general,  
consistent counterclockwise direction:

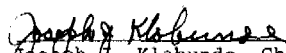
Missoula County: Alva Lake  
Inez Lake  
Seeley Lake

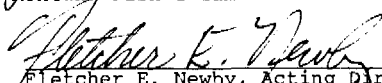
4. The department is proposing this amendment because  
of complaints received regarding noninjury accidents in the  
area of the Gates of the Mountains, and for public safety  
and protection of property.

5. Interested persons may present their data, views, or  
arguments, either orally or in writing, at the hearing. Written  
data, views, or arguments may also be submitted to Robert M.  
Miller at the department's Helena address no later than  
February 16, 1981.

6. F. Woodside Wright has been designated to preside  
over and conduct the hearing.

7. The authority of the agency to make the proposed  
amendment is based on Sections 87-1-303 and 23-1-106(1),  
MCA, and the rule implements Sections 87-1-303 and 23-1-106(1),  
MCA.

  
Joseph J. Klabunde, Chairman  
Montana Fish & Game Commission

  
Fletcher E. Newby, Acting Director  
Department of Fish, Wildlife & Parks

Certified to Secretary of State December 23, 1980

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

In the matter of the amendment	)	
of ARM Rule 16.8.1412, Sulfur	)	
Oxide Emissions -- Primary	)	
Non-Ferrous Smelters	)	
	)	
and	)	NOTICE OF RESCHEDULING
	)	and CONTINUANCE OF
	)	PUBLIC HEARING
In the matter of the Adoption	)	
of a Rule Setting Sulfur	)	
Oxide Emission Limitations	)	
for Existing Lead or Lead-	)	
Zinc Smelting Facilities	)	

TO: All Interested Persons

1. On November 28, 1980, the Board of Health and Environmental Sciences published notice of the proposed amendment of rules and adoption of a new rule regarding sulfur oxide emissions affecting primary non-ferrous smelters on pages 2950-2954 of the Montana Administrative Register (MAR), issue no. 22, and set January 9, 1981, at 9:00 o'clock a.m. as the date and time for public hearing on the proposed rules amendment and adoption.

2. The hearing of the proposed rule change is being rescheduled and continued until a date when a duly constituted Board may hear testimony and consider the matter.

3. The text of the proposed amendment and proposed adoption of a new rule in this matter remains unchanged and may be found at pages 2950-2954 of 1980 MAR issue 22.

4. The public hearing of this matter is hereby rescheduled and continued until February 20, 1981, at 9:00 o'clock a.m., or as soon thereafter as the matter may be heard, in the auditorium of the Montana Department of Highways Building, 2701 Prospect Avenue, Helena, Montana.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, 1 North Last Chance Gulch, Helena, Montana, 59601, no later than February 19, 1981.

6. C. W. Leaphart, 1 North Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

John F. McGregor  
JOHN F. MCGREGOR, M.D., Chairman

By Rita Ann Sheehy  
RITA ANN SHEEHY

Certified to the Secretary of State January 5, 1981



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

In the matter of the amendment )	
of ARM Rule 16.20.401, Plans )	NOTICE OF RESCHEDULING
for Public Water or Sewer )	and CONTINUANCE OF
Systems )	PUBLIC HEARING

TO: All Interested Persons

1. On November 28, 1980, the Board of Health and Environmental Sciences published notice of the proposed amendment of rule ARM 16.20.401, Plans for Public Water or Sewer Systems on pages 2955-2959 of the Montana Administrative Register (MAR), issue no. 22, and set January 9, 1981, at 9:30 o'clock a.m. as the date and time for public hearing on the proposed rule amendment.

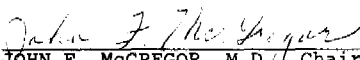
2. The hearing of the proposed rule change is being rescheduled and continued until a date when a duly constituted Board may hear testimony and consider the matter.

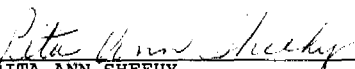
3. The text of the proposed rule amendment in this matter remains unchanged and may be found at pages 2955-2959 of 1980 MAR issue 22.

4. The public hearing of this matter is hereby rescheduled and continued until February 20, 1981, at 9:30 o'clock a.m., or as soon thereafter as the matter may be heard, in the auditorium of the Montana Department of Highways Building, 2701 Prospect Avenue, Helena, Montana.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, 1 North Last Chance Gulch, Helena, Montana, 59601, no later than February 19, 1981.

6. C. W. Leaphart, 1 North Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

  
JOHN F. MCGREGOR, M.D. Chairman

By   
RITA ANN SHEEHY

Certified to the Secretary of State January 5, 1981

STATE OF MONTANA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING  
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

IN THE MATTER of the proposed )	NOTICE OF PROPOSED AMENDMENTS
amendments of ARM 40.54.402 )	OF ARM 40.54.402 APPLICATIONS;
concerning applications; 40.54) 40.54.404 CERTIFICATE OF	
404 concerning certificates of) LICENSE; 40.54.405 PERMIT	
license; 40.54.405 concerning ) EXAMINATIONS; and PROPOSED	
permit examinations; and pro- ) ADOPTION OF A NEW RULE CON-	
posed adoption of a new rule) CERNING TEMPORARY PERMITS	
concerning temporary permits. )	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 11, 1980, the Board of Radiologic Technologists published a notice of proposed amendments and adoption in the above entitled matter. The Administrative Code Committee of the legislature questioned several portions of the proposed amendments and adoption and the board is therefore renoting the proposed amendments and adoption at this time.

2. On February 14, 1981, the Board of Radiologic Technologists proposes to amend rules ARM 40.54.402 concerning applications; 40.54.404 concerning certificates of license; and 40.54.405 concerning permit examinations; and adopt a new rule concerning temporary permits.

2. The proposed amendment of ARM 40.54.402 will read as follows: (new matter underlined, deleted matter interlined)  
"40.54.402 APPLICATIONS (1) All applications for licensure or permit shall be made on printed forms provided by the board office. Completed applications shall be examined for compliance with the board rules. Applications properly completed and accompanied by the proper fees shall be entered in the records of the board; incomplete applications or those not accompanied by the proper fees will be returned to the applicant with instructions as to the correction thereof, and the application will be held in abeyance until proper completion.

(2) All applications for licensure or permit shall be made on printed forms provided by the board.

(a) The information requirements which appear on the application form ~~are incorporated into these rules by this reference; 6~~ generally includes, the application asks for the applicant's educational history, work experience, as a radiologic technologist, and verifications of license or permits in other states, and asks for verification of education and work experience by the appropriate institute(s) and former employer(s).

(b) The board may, in its discretion, require statements of good moral character and references from all of the applicant's places of employment.

(2) The board further requires that all applications

for a license shall be submitted to the board office with copies of the following documents:

- (a) copy of board approved 24-month x-ray course certificate;
- (b) copy of current A.R.R.T. wallet card;
- (c) three names and addresses of persons who can attest to the applicant's good moral character;
- (d) \$15.00 original certificate fee; and
- (e) renewal license fee of \$20.00 for odd numbered years or \$10.00 for even numbered years. (based on biennial renewals).

(3) The board further requires that all applications for a permit shall be submitted to the board office with copies of the following documents:

- (a) copy of board approved 24 hours x-ray course certificate;
- (b) three names and addresses of persons who can attest to the applicant's good moral character;
- (c) letter from a physician or administrator stating that the applicant is employed; and has at least 6 months practical experience in the x-ray profession;
- (d) examination fee of \$10.00; and
- (e) original permit fee of \$10.00.

~~(c)-(4)~~ (4) All applications and related data will be kept in permanent files and maintained by the board office.

~~(3)-(5)~~ (5) At any time within one year after date of notice of action by the board, a written request may be made for reconsideration of an application. ~~which has been rejected.~~ After one year has expired from the date the application is received by the board, a new application must be ~~made~~ submitted."

4. The amendment is proposed to set out specific procedures and documents required when filing an application. The authority of the board to make the proposed amendment is based on section 37-14-202, MCA and implements sections 37-14-302, 305, and 306, MCA.

5. The proposed amendment of ARM 40.54.404 will read as follows: (new matter underlined, deleted matter interlined)

"40.54.404 CERTIFICATE OF LICENSURE (1) A certificate of licensure will be issued by the board after approval of the application and successful completion of the A.R.R.T. examination, where required, and will bear a licensure number for the applicant.

(a) Applicants approved for licensure as radiologic technologists will receive one permanent certificate along with a biennial renewable license, authorizing the practice of radiologic technology."

6. The board is proposing the amendment to name a specific

examination and to make the licensees aware that renewals are biennial. The authority of the board to make the proposed amendment is based on section 37-14-202, MCA and implements sections 37-14-304, 305, and 306, MCA.

7. The proposed amendment of ARM 40.54.405 will read as follows: (new matter underlined, deleted matter interlined)

"40.54.405 PERMIT EXAMINATIONS (1) ~~A non-refundable~~  
fee of \$10.00 will be assessed for the examination.  
The permit examination will cover basic radiation,  
dark room procedures, anatomy and physiology, radiation  
protection, and health and safety to the patient.

(2) ~~The examinee may review his/her examination~~  
~~papers in the office of the board within 90 days after~~  
~~notification of the results.~~ The permit examination  
will be administered by the board office at least  
twice a year. Applicants for examination will be  
notified at least 30 days in advance of the scheduled  
examination.

(a) Applicants for examination may request to take  
the examination in the board office any day of the  
working week. This request must be in writing and  
must be received in the board office at least five  
days prior to the requested examination date.

(b) Board members may administer the examination  
to examination applicants. Applicants shall make  
the request directly to the board member. If the  
board member agrees to proctor the examination, the  
applicant shall notify the board office in writing  
of the board member who shall be proctoring the examina-  
tion, the examination date, time and place. All requests  
shall be received in the board office at least 5 days  
prior to the scheduled examination.

(3) Examination results will be mailed out to each  
examination applicant by the board office at least  
5 days after taking the examination.

(4) Applicants may review their examination papers  
with board members at a regularly scheduled board  
meeting only.

(5) Applicants failing the examination may re-take  
the examination five days after the date of failure.

(6) A non-refundable fee of \$10.00 will be assessed  
for the examination. After failing the examination  
three times, the applicant will be required to resubmit  
an additional \$10.00 examination fee and must comply  
with rule ARM 40.54.406.

~~(3)~~ (7) Passing score for the permit examination are  
listed as follows:

(a) General knowledge portion 56 out of 75 correct  
answers

- (b) Chest, extremities, spine, 20 out of 25 correct  
skull answers
- (c) Other, including 24 out of 30 correct  
fluoroscopy answers

~~(4)--The-examination-will-cover-basic-radiation,-  
dark-room-procedure,-anatomy-and-physiology,-radiation--  
protection,-and-health-and-safety-to-the-patient-~~

~~(5)--Applicants-for-examination-will-be-notified  
at-least-30-days-in-advance-of-a-scheduled-examination."~~

8. The board is proposing the amendment to state specific procedures for administering and grading of the examination. The board also has rearranged the current subsections of the rule for clarity. The authority of the board to make the proposed amendment is based on section 37-14-202, MCA and implements section 37-14-306, MCA.

9. The proposed new rule concerning temporary permits will read as follows:

"I. TEMPORARY PERMITS (1) Any person applying for a temporary permit must file with the board office an application, which shall include:

(a) a letter from the administrator stating the regional hardship or emergency condition which exists in the area;

(b) a letter from the applicant stating the total number of x-rays which the department has taken in the past month and the total number of x-rays which the applicant assisted on;

(c) a letter from the applicant stating why he or she at this time is not able to take the examination and be issued a permit; and

(d) a non-refundable temporary permit fee of \$10.00.

(2) The entire board shall review the application and information submitted before voting on the issuance of the temporary permit.

(3) If the board should deny the issuance of the temporary permit, the board shall write to the administrator stating the reasons why the request was rejected."

10. The board is proposing adoption of the new rule to set down procedures for applying for a temporary permit. the authority of the board to make the proposed adoption is based on section 37-14-202, MCA and implements sections 37-14-305, 306, MCA.

11. Interested parties may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Radiologic Technologists, Lalonde Building, Helena, Montana 59620 no later than February 12, 1981.

12. If a person who is directly affected by the proposed


amendments and adoption 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 Radiologic Technologists, Lalonde Building, Helena, Montana 59620 no later than February 12, 1981.

13. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments and adoption, from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date.

14. The authority and implementing section are listed after each proposed change.

BOARD OF RADIOLOGIC TECHNOLOGISTS  
REYNOLD J. BENEDETTI, R.T.,  
CHAIRMAN

BY:

  
ED CARNEY, DIRECTOR  
DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, January 5, 1981.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PUBLIC HEARING ON
MENT OF RULE 42.21.134,	)	PROPOSED AMENDMENT OF RULE
relating to the valuation	)	42.21.134, relating to the
of commercial furniture	)	valuation of commercial furni-
and fixtures.	)	ture and fixtures.

TO: All Interested Persons:

1. On February 11, 1981, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room in the Mitchell Building, Helena, Montana, to consider the amendment of Rule 42.21.134, relating to the valuation of commercial furniture and fixtures.

2. The proposed amendment replaces present rule 42.21.134, found in the Administrative Rules of Montana. The proposed amendment provides the basis for determining market value for furniture and fixtures used in commercial establishments for the tax year beginning January 1, 1981.

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

42.21.134. FURNITURE AND FIXTURES USED IN COMMERCIAL ESTABLISHMENTS (1)(a) ~~The average market value of commercial furniture and fixtures shall be determined using trended depreciation tables established by the department of revenue. The average life of these properties necessitates the use of two tables. A 5-year table to be used for those designated properties which research indicates depreciate rapidly and a 10-year table which is to be used for all commercial furniture and fixtures which has a longer life. The kinds of fixtures that the 5-year depreciation table has been designed for and our instruction specifies for are: electronic machines, computer system, data processing equipment, cash registers and all coin-operated equipment. All other property will use the 10-year table.~~

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

TABLE 1 - 5 YEARS

YEAR	R-3 % GOOD	*TREND FACTOR	TRENDED & GOOD OR MARKET VALUE
1 yr. old	80%	1.000	80%
2 yr. old	61%	1.057	64%

3 yr. old	44%	1.133	50%
4 yr. old	28%	1.179	33%
5 yr. old	17%	1.289	22%
and older			

TABLE 2 — 10 YEARS

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

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

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

(e) The provisions of subsection (1) of this rule apply to the calendar year commencing January 1, 1979.

(2)(a) The average market value of commercial furniture and fixtures is determined by using trended depreciation tables established by the department. The average life of these types of properties necessitates the use of three tables. A 3-year table is to be used for electronic equipment that is subject to rapid depreciation due to technological obsolescence. A 5-year table is to be used for those properties that research indicates depreciate rapidly but which do not qualify for the 3-year table. A 10-year table is to be used for those furniture and fixtures not subject to the 3-year or 5-year tables. Examples of properties subject to the various tables are given in subsection (2)(c) of this rule.

(b) The following tables are the depreciation schedules referred to in subsection (2)(a) of this rule. The tables were



compiled using a straight-line depreciation schedule with a residual value of 10% followed by multiplication by a trend factor.

TABLE 1 : 3 YEARS

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 year old	70%	1.000	70%
2 years old	40%	1.101	44%
3 years old and older	10%	1.194	12%

TABLE 2 : 5 YEARS

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 year old	82%	1.000	82%
2 years old	64%	1.101	70%
3 years old	46%	1.194	55%
4 years old	28%	1.331	37%
5 years old and older	10%	1.456	15%

TABLE 3 : 10 YEARS

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 year old	91%	1.000	91%
2 years old	82%	1.101	90%
3 years old	73%	1.194	87%
4 years old	64%	1.331	85%
5 years old	55%	1.456	80%
6 years old	46%	1.777	82%
7 years old	37%	1.846	68%
8 years old	28%	1.877	53%
9 years old	19%	1.938	37%
10 years old and older	10%	2.055	21%

(c)(i) The following types of property are subject to the 3-year table: - computer systems, data processing equipment, electronic cash registers, and other associated electronic equipment.

(ii) The following types of property are subject to the 5-year table: - vending machines, nonelectronic cash registers, coin-operated equipment, radio and television broadcasting and transmitting equipment, and hotel and motel furniture and

fixtures.

(iii) ~~The following types of property are subject to the 10-year table: specialized medical and dental equipment, repair shop tools and equipment, citizen's band radios, mobile phones, and PBX type systems.~~

(iv) ~~The lists in subsections (2)(c)(i), (ii), and (iii) above are not meant to be exhaustive, but are intended to be illustrative of the types of property subject to each table.~~

(d) ~~The provisions of subsection (2) of this rule apply to the calendar year commencing January 1, 1980.~~

(3) ~~The trend factor used in determining the trended depreciation percentage will be revised each year to reflect the current cost of living index.~~

(1) The market value of commercial furniture and fixtures is determined using trended depreciation tables established by the department. The tables are found in subsection (2), and the trend factors were compiled using comparative cost multipliers based on data published by the Marshall and Swift Publication Company.

(2) The following tables are the trended depreciation schedules used to determine market value of commercial furniture and fixtures:

TABLE 1: 5 YEARS

Vending Machines, Cash Registers, Coin Operated Equipment, Radio and T.V. Broadcasting and Transmitting Equipment, Hotel and Motel Furniture and Fixtures, Office Copiers, Computer Systems, Data Processing Equipment, Electronic Cash Registers, Other Associated Electronic Equipment, Calculators, and Typewriters.

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 Year Old	85%	1.000	85%
2 Years Old	69%	1.037	72%
3 Years Old	52%	1.138	59%
4 Years Old	34%	1.218	41%
5 Years Old and Older	20%	1.284	26%

TABLE 2: 10 YEARS

Specialized Medical and Dental Equipment, Repair Shop Tools, Citizenband Radio, Mobile Phones, PBX Typesystem, Show

Cases, Restaurant and Van Fixtures, and All Other  
Commercial Furniture, Fixtures and Equipment.

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 Year Old	92%	1.000	92%
2 Years Old	84%	1.037	87%
3 Years Old	76%	1.138	86%
4 Years Old	67%	1.218	82%
5 Years Old	58%	1.284	74%
6 Years Old	49%	1.359	67%
7 Years Old	39%	1.418	55%
8 Years Old	30%	1.695	51%
9 Years Old	24%	1.783	43%
10 Years Old and Older	20%	1.851	37%

(3) The lists of furniture and fixtures provided with the tables in subsection (2) are not meant to be exhaustive, but are intended to be illustrative of the types of property subject to the respective tables.

(4) This rule applies to tax years beginning on or after January 1, 1981.

4. The proposed amendment provides depreciation tables for determining the market value of furniture and fixtures used in commercial establishments. The five and ten-year tables are provided with 20% residuals. These trend factors are based on comparative cost multipliers for office equipment as published by the Marshall and Swift Publications Company.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than February 13, 1981, to:

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

6. Ross Cannon has been designated to preside over and conduct the hearing.

7. Authority of the Department to make the proposed amendments is based on Section 15-1-201, MCA. The proposed amend-

ments implement Sections 15-6-137, 15-6-139, 15-6-140, MCA.

  
MARY D. CRAIG, Director

Certified to the Secretary of State 12-30-80

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

IN THE MATTER of the adoption ) NOTICE OF PUBLIC HEARING  
of rules implementing Initia- ) FOR THE ADOPTION OF RULES  
tive 85, the Montana Lobbyist )  
Disclosure Act of 1980 )

TO: All Interested Persons

1. On February 10, 1981, at 9:00 o'clock a.m., a public hearing will be held in the Governor's reception room of the state capitol building, Helena, Montana, to consider the adoption of rules implementing Initiative 85, the Montana Lobbyist Disclosure Act of 1980. A more detailed summary of the rules' effects is given below.

2. The proposed rules do not replace or modify any sections currently found in the Administrative Rules of Montana.

Authority for all rules is based on New Section 17 of Initiative 85. The text of the proposed rules is as follows (all language is new):

RULE I. LOBBYING - DEFINITION (1) As used in section 5-7-102(4), the phrase "practice of promoting or opposing" the introduction or enactment of legislation or official action means attempting to influence such actions by direct personal contact and persuasion, or direct written communications from the lobbyist to the legislator or public official in question.

RATIONALE: For constitutional reasons, it is necessary to confine the definition of "lobbying" to such direct efforts. Those who undertake such efforts (on behalf of another person) are lobbyists as defined and the other person is a "principal" if the money spent reaches the \$1000 threshold level. Such principals are then required to file reports, and must report expenses of other indirect "lobbying" efforts as required by new section 11. The proposed rule implements section 5-7-102(4).

RULE II. NON-LEGISLATIVE LOBBYING (1) For purposes of section 5-7-102(4)(b), a person is engaged in "lobbying" as defined when he is attempting to influence the decision or action of state government agencies when they are conducting the following types of proceedings:

(a) any hearing conducted by any executive branch agency of state government pursuant to the Montana Administrative Procedure Act, the purpose of which is to adopt, amend, or repeal administrative rules; and

(b) any other proceeding conducted by any other state agency the purpose of which is to set or modify rates or tariffs of a regulated industry.

RATIONALE: This rule is needed to clarify what is covered by section 5-7-102(4)(b). Although the Act itself is probably capable of being extended to cover a wider range of activities

than this, the Agency is soliciting public comment first. A person who spends more than \$1000 in a calendar year to influence such decisions (through fees, salaries, expenses, etc.) is a "principal" or a "lobbyist" as defined and required to file reports. The proposed rule implements section 5-7-102(4)(b).

RULE III. PUBLICATIONS BY PRINCIPALS - DEVOTED TO LOBBYING MATTERS (1) As used in New Section 11(4)(a)(ii), the phrase "devoted to lobbying matters" describes a publication by a principal which urges others to contact legislators or other officials and engage in direct lobbying activities such as personal persuasion or letter campaigns.

(2) Such a publication is considered to be over one-half devoted to lobbying matters if one half or more of the total column-inch space of the publication urges such direct lobbying activities.

(3) This rule and New Section 11(4)(a)(ii) apply only to a person who, by reason of other direct lobbying activities or payments, is a "principal" as defined.

RATIONALE: This rule is required to clarify the provisions of New Section 11(4)(a)(ii). It is important to establish that the rule and the new section apply only to "principals," who by reason of other activities, are already required to file reports. Thus it has no application to the newspapers or the rest of the organized press or news media. The proposed rule implements New Section 11(4)(a)(ii).

RULE IV. PERSONAL FINANCIAL DISCLOSURE BY ELECTED OFFICIALS (1) For purposes of sections 5-7-102(12) and New Section 16, the term "business interest" means any interest in any business, firm, corporation, partnership, or other business or professional entity or trust owned by an elected official, his spouse or minor children, the current fair market value of which is \$1000 or more. Ownership of any security, equity, or evidence of indebtedness in any business corporation or other entity is a "business interest."

(2) Not included within the meaning of "business interest" and therefore not reportable under New Section 16 are interests of the following nature:

(a) ownership of any personal property held in an individual's name and not held for use or sale in a trade or business or for investment purposes, such as personal automobiles or household furnishings;

(b) cash surrender value of any insurance policy or annuity;

(c) money held in any retirement fund, whether public or private;

(d) bank deposits, including checking or savings accounts or certificates of deposit, if they are not held for use in a trade or business;

(e) securities issued by any government or political subdivision.

(3) In section 5-7-102(12), "property held in anticipation of profit" includes an ownership interest in real property. An ownership interest includes a fee, life estate, joint or common tenancy, leasehold, beneficial interest (through a trust), option to purchase, or mineral or royalty interest, if the current fair market value of the interest is \$1000 or more.

(a) It is not necessary to disclose ownership of a personal residence, but each elected official is entitled to exclude only one residence for himself and one for any member of his immediate family who does not reside with the official.

(b) While valuation of the property is not required (it need only be disclosed if its current fair market value exceeds \$1000), a description of both the property and the nature of the interest must be included. This must be a legal or other description sufficient to identify the property without recourse to oral testimony. A street address is sufficient unless it is a rural route. The nature of the property must be described; for example, farm, ranch, vacation home, commercial or residential property, raw land held for investment, etc. Any real property held by or through a corporation or other business entity which was disclosed pursuant to paragraph (1) above need not be disclosed pursuant to this part.

**RATIONALE:** The rule is needed to further define and clarify what must be reported under New Section 16. Real property is treated either as a "business interest" or "property held in anticipation of profit." We see no need to treat a personal residence, however, as property held in anticipation of profit. The proposed rule implements section 5-7-102(12) and New Section 16.

**RULE V. LOBBYISTS--REPORTING OF INFORMATION TO PRINCIPAL** (1) It is the duty of each individual lobbyist whose activities are covered by this Act to maintain records regarding information required to be reported by this Act and to transmit such information to his principal in a fashion that will allow timely reporting by the principal.

**RATIONALE:** This rule is required since the Act requires reports of lobbying expenditures to be filed by principals, but certain required information will be in the possession of the lobbyist. The proposed rule implements New Section 11.

**RULE VI. CLOSING DATE OF BOOKS** (1) Whenever any date is established in the Act for the filing of reports required by the Act, such reports shall be complete as of ten days prior to the date established.

(2) Subsequent reports shall cover the period from ten days before the due date of the previous report to ten days prior to the next required report.

(3) The report required by New Section 11(2)(c) to be filed within 60 days of the end of a legislative session shall be filed no later than June 1st of any legislative-session year, and shall be complete as of the preceding May 15th.

**RATIONALE:** It is necessary to establish a cutoff point for the accumulation of expense totals, and to allow a period of time for the completion of reports to be filed. The proposed rule implements New Section 11.

**RULE VII. STATE GOVERNMENT AGENCIES--LOBBYING--DEFINITIONS** (1) For purposes of calculation of expenditures for lobbying efforts by government agencies, salaries paid to employees engaged in the following types of activities need not be calculated or reported:

(a) requests for appropriations by a state agency to the office of budget and program planning or requests by the office of budget and program planning to the Legislature on behalf of another agency;

(b) recommendations or reports to the legislature or a committee thereof in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;

(c) request, recommendations, or other communications between or within state agencies or between or local government agencies;

(d) any appearance before the legislature or a committee thereof, if the appearance is at the request of the legislature, a committee thereof, or an individual legislator;

(e) any other duty which is mandated by law or rule, such as the governor's annual message to the Legislature.

(2) With the above exceptions, any other activities of state government agencies which are direct attempts to influence the actions of the legislature are "lobbying" as defined, and the staff time and resources expended are lobbying payments. Each individual department of the executive branch is a "principal" as defined if lobbying payments reach the threshold \$1000 level. Each department shall file a single report on the statutory dates which covers lobbying activities of all staff members.

(3) For purposes of section 5-7-102(3), "public official" has the same meaning as "public officer" as defined in section 2-16-202, MCA, except that department heads of executive branch departments are considered to be "public officials" within the meaning of this rule. No activity by any such public official is considered to be "lobbying" within the meaning of the Act or this rule.

**RATIONALE:** Since the Act defines "lobbying" as any direct attempt to influence the actions of the Legislature, making an exception only for actions of public officials, by implication it covers activities of public employees. However, since many of their activities are mandated by law, it is necessary to make certain exceptions. The Act itself does this in New Section 14. The proposed rule implements New Sections 11 and 14. It is authorized by New Section 17.



RULE VIII. ALLOCATION OF TIME AND COMPENSATION (1) A person who is compensated by a principal and whose duties include lobbying is lobbying for hire, as defined in section 5-7-102(6). If substantially all of such an employee's or agent's time is devoted to lobbying activities, the total sum of all compensation paid to him during a given period must be reported as lobbying payments.

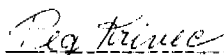
(2) If only a portion of such an individual's time is devoted to lobbying activities, then the sum reportable as lobbying payments is the proportion of the total compensation paid during the period which equals the reasonable proportion of the total hours or days spent on lobbying activities during the period. For example, if any employee or agent is paid \$500 per week and spends two days in a week on lobbying activities, then \$200 should be reported by his principal as lobbying payments.

RATIONALE: While the idea stated in this rule seems self-evident, the rule is specifically required by New Section 17 of Initiative 85. The proposed rule implements that section.

3. 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 Peg Krivec, Commissioner of Political Practices, Capitol Station, Helena, Montana 59620, no later than February 25, 1981.

4. Jack Lowe, § Commissioner of Political Practices, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

5. The authority of the agency to make the proposed rules is based on New Section 17 of Initiative 85.

  
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PEG KRIVEC  
Commissioner of Political  
Practices

Certified to the Secretary of State January 5, 1980.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amend- ) NOTICE OF AMENDMENT  
ment of Rule 12.3.103 relating ) OF RULE 12.3.103  
to priorities for special )  
permits )

TO: All Interested Persons.

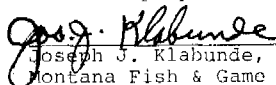
1. On October 30, 1980, the Montana Fish and Game Commission published notice of a public hearing on a proposed amendment of a rule relating to priorities for special permits at page 2845 of the 1980 Montana Administrative Register, issue No. 20.

2. The commission has amended the rule as proposed to gradually phase out the priority system for hunters applying for limited special moose, sheep, and goat permits.

3. The comments received at public hearing and at the Helena office by letter number some 181. For this reason, individual responses will not be made to each and every comment received in this matter. The record of these comments, the hearing examiner's report, and the commission proceedings in relation to this rule are available for examination at the department's Helena office.

In summarizing the comments received, most commenters felt that the original reason for implementing the preference system was sound and still exists. A majority of those commenting favored continuing the system, with the understanding that if it must be done away with, a gradual phase-out was preferred to an immediate discontinuance of the system. Many suggestions were made with regard to improving the current system so that it could be continued, with support of the concept of paying more to participate, including the establishment of a trophy fee and/or imposing a nonrefundable fee for those who wished to participate. Suggestions were also presented to eliminate or improve upon the "inverse pyramid" effect of the current system. There was feeling expressed that the commission and the department had a moral obligation, if not a contractual one, to the hunters who had been participating in the system. Some commenters felt the problem was with the department's operation of the system rather than with the system itself.

After due consideration, the commission determined the reasons presented by the department for a 3-year phase-out of the system were sufficient and not overcome by objectors' comments, and amended the rule as proposed.

  
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Joseph J. Klabunde, Chairman  
Montana Fish & Game Commission

Certified to Secretary of State December 30, 1980

BEFORE THE BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

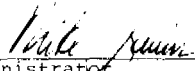
In the matter of the	)	NOTICE OF THE
Amendment of Rule	)	AMENDMENT OF RULE
23.14.413	)	23.14.413

TO: All Interested Persons:

1. On November 14, 1980 the Board of Crime Control published notice of a proposed amendment to rule 23.14.413 concerning certification requirements for peace officer trainees attendance and performance at certified training courses on pages 2889 and 2890 of the 1980 Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because it sets forth the firearms qualification score for the basic course and for firearms qualification scores for all other courses where firearms qualification is required for certification purposes. All of these courses have been upgraded to combat style exercises using silhouette targets in contrast to the previous courses utilizing bullseye targets. The scoring is different, thus necessitating an upgrading in the required qualifying scores. The various states with POST programs have upgraded their firearms qualifying courses and scores to the level proposed here. The POST advisory council's objective is to maintain similar standards with other states' programs whenever the courses are similar.

  
\_\_\_\_\_  
Administrator

Certified to the Secretary of State December 17, 1980

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

In the matter of the Amendment) NOTICE OF AMENDMENT OF ARM  
of ARM 40.30.414 subsections ) 40.30.414 (3), (4) EXAMINATIONS  
(3) and (4) concerning examina- )  
tions. )

TO: All Interested Persons:

1. On November 28, 1980, the Board of Nursing Home Administrators published a notice of proposed amendment of ARM 40.30.414 subsections (3) and (4) concerning examinations at pages 2962-2963, 1980 Montana Administrative Register, issue number 22.

2. The board received a comment from David Ness, Staff Attorney for the Administrative Code Committee in regard to the listed authority and implementing sections. The board should have cited section 37-9-203, MCA as an authority section and sections 37-9-203(1) and 301, MCA as implementing sections.

Comments were also received from Richard York, Nursing Home Administrator, who currently has a candidate that meets the existing requirements and asked if the candidate may be "grandfathered in" under the existing requirement. Otherwise, he appreciates that the board is trying to "clearly define" the requirements for admission to examination.

Larry Scanlon, Chairman Custer County Commissioners, stated feelings of the commissioners that more alternates should be provided; that some allowance should be made for "field experience without the college", (i.e., owning and operating a small business for a number of years) or longer periods of working in the field of nursing home administration either as an administrator or as an assistant.

Donald Peterson, Nursing Home Administrator, stated the proposed requirements were much too limited, there were other college courses that qualify persons equally as well as the 2 years of college in business administration and consideration to expanding that requirement should be given. Also, exceptions to (a) and (b) are much too restrictive; that many other baccalaureate programs would adequately qualify persons to enter the nursing home administration field such as social worker, nursing and other areas of business of school administration.


An invitation to attend the meeting where the board discussed the changes in the rule had been mailed to Ron Scmingson, President of the Montana Nursing Home Administrators Association and Rose Skoog, Executive Director, (even though Mr. Scmingson chose not to attend). Ms. Skoog failed to voice any objections during the board discussion concerning the promulgation of this set of rules. The board has determined that neighboring states have more stringent requirements for licensure than Montana. Because the board has been striving to upgrade the qualifications for nursing home administrators, they will proceed with the amendment of the rule as proposed.

Should at some future date, the need for alternatives become of major concern, the board will again review these rules for possible alternatives.

3. The board is amending the rule for the reasons stated above and those stated in the notice.

BOARD OF NURSING HOME  
ADMINISTRATORS  
MRS. H.E. GERKE, CHAIRMAN

BY:

  
ED CARNEY, DIRECTOR  
DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, January 5, 1981.

VOLUME NO. 37

OPINION NO. 117

SUBDIVISIONS - Occasional sales, computation of twelve-month limitation;

LAND - Subdivisions, occasional sales, twelve-month limitation.

HELD: The twelve-month limitation period on occasional sales of land in 76-3-207(1)(d) and 76-3-103(7) commences with the actual transfer of interest in the parcel of land from the grantor to the grantee.

23 December 1980

Ted O. Lympus, Esq.  
Flathead County Attorney  
P.O. Box 1516  
Kalispell, Montana 59901

Dear Mr. Lympus:

You have requested my opinion on the following question:

When does the twelve-month time period for occasional sales begin to run?

Section 76-3-207 provides that certain land transfers are not subdivisions, including:

- (1) ...
- (d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale.

Section 76-3-103(7) defines "occasional sale" as "one sale of a division of land within any 12-month period." An occasional sale is nonetheless subject to the surveying requirements of 76-3-401.

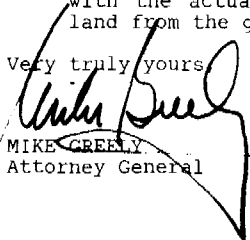
The question you have raised is whether the twelve-month period begins to run with the filing of a certificate of survey under 76-3-401, et seq., or whether it begins to run with the actual sale of the particular parcel. You have correctly suggested that the period begins with the sale itself.

This is the obvious and necessary conclusion from the face of the statutes noted above. They prohibit a person from making more than one occasional sale in a twelve-month period. They do not prohibit the filing of more than one certificate of survey in a twelve-month period. Since both "occasional sale" and "certificate of survey" are defined in 76-3-103, it is clear that if the legislature had intended the filing of the certificate to be the significant act they would have so provided. The filing of the certificate merely creates the parcel for purposes of the Subdivision and Platting Act. It is the actual sale, however, that is restricted by 76-3-207(1)(d). A sale is the actual transfer of title from the grantor to the grantee. DeMers v. O'Leary, 126 Mont. 528, 534, 254 P.2d 1080, 1084 (1953).

THEREFORE, IT IS MY OPINION:

The twelve-month limitation period on occasional sales of land in 76-3-207(1)(d) and 76-3-103(7) commences with the actual transfer of interest in the parcel of land from the grantor to the grantee.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 38

OPINION NO. 118

CONTRACTORS - Public;  
CONTRACTORS - Public contractors license tax;  
CONTRACTS - Public construction;  
TAXATION AND REVENUE - Public contractors license tax;  
MONTANA CODE ANNOTATED - Sections 15-501-101, 15-50-205 and 15-50-207.

HELD: The turnkey method of production of new public housing units is a public contract subject to the public contractor's licensing tax.

31 December 1980

Jeffrey M. Sherlock, Esq.  
City Attorney  
Civic Center Building  
Helena, Montana 59601

Dear Mr. Sherlock:

You have requested my opinion on the following question:

Whether a "turnkey" contract of sale between a public housing authority and a private contractor, executed pursuant to a regulation of the United States Department of Housing and Urban Development is a contract for performing public construction as contemplated by the Montana statutes imposing a public contractor's tax.

A public contractor's license tax is provided for in sections 15-50-101 through 15-50-303, MCA. This tax has been imposed in Montana in some form since 1935. Pursuant to these statutes, licensed public contractors are required to pay to the state a sum (denominated an additional license tax) equal to one percent of the gross receipts from public contracts. § 15-50-205, MCA.

Whether this tax ultimately results in an overall increase in a public contractor's tax liability is dependent upon each contractor's particular income tax and property tax position in any given year. Pursuant to section 15-50-207, MCA, a public contractor is entitled to a credit against his corporation license, income, and/or personal property taxes for amounts paid as public contractor taxes. §15-50-207,



MCA. For purposes of the public contractor's license and tax, a public contractor is defined as follows:

...any person who submits a proposal to or enters into a contract for performing all public construction work in the state with the federal government, state of Montana or with any board, commission, or department thereof, or with any board of county commissioners or with any city or town council or with any agency of any thereof, or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of \$1,000. §15-50-101(1)(a), MCA.

In July of 1979, the Helena Housing Authority, a public body created by ordinance of the city of Helena pursuant to the terms of Title 7, chapter 15, part 44, MCA, entered into a so-called "turnkey" contract of sale with a private construction company. The "turnkey" contract is one of the alternative legal vehicles which a public housing authority may utilize pursuant to federal regulations to secure new public housing units funded in large measure by the federal government.

There can be no doubt that the contract in question is a public contract. The precise issue presented by this opinion request is whether a "turnkey" contract is a contract for performance of construction work as contemplated by section 15-50-101(1)(a), MCA.

A detailed description of the procedures involved in the "turnkey" method of providing public housing units can be found at 24 CFR 841.201, et seq. (1980). Numerous agreements are involved. The basic concept is, however, that the Public Housing Authority (PHA) contracts for a completed development to be produced by the developer on his own land and with payments to be made upon the "turning over the keys" of the development to the PHA. See, Burstein, "New Techniques For Public Housing", 32 L. CONTEMP. PR 528 (1967).

...The turnkey system completely reverses the traditional method of producing public housing--site acquisition by purchase or condemnation, preparation of competitive-bidding type plans and specifications by an architect retained by the

[PHA], competitive bidding and award, and construction by the low bidder.

Burnstein at 530.

Despite the substantial differences between the "turnkey" method and the traditional process for providing public housing units, it would be simplistic to view the arrangement as a mere contract of sale. From the initial designation of the "turnkey" developer to the signing of a letter of intent, contract of sale and through the construction process, mutual obligations arise and strict controls are in place.

One such example is site acquisition:

The PHA shall not authorize a turnkey developer to acquire a site, or to make a commitment to acquire a site until after the execution of [the contract between HUD and the PHA authorizing the particular development]. ... Ownership of the site by the developer...shall be accomplished prior to... commencement of construction. ...

24 CFR 841.114(c)(1980).

Similarly, the turnkey agreement for the project here at issue provides:

2.6 Inspections During Construction.

(a) A Clerk-of-the-Works shall make routine inspections of the sites. Members of the Helena Housing Authority Board and staff as well as the inspecting architect and HUD employees shall have free access to the construction sites to make inspections to determine conformity with Contract. All comments concerning inspections will be communicated to the Seller through the Purchaser's inspecting architect. The results of the Purchaser's inspection shall be incorporated in written reports which shall include any observed defects or deficiencies in the improvements. Purchaser shall send copies of these reports, within five (5) working days of each inspection, to the Seller and to the Seller's architect for the project. In the event of any dispute as to compliance with Exhibit B, which arises in the course of the work and which cannot be resolved

between Purchaser and Seller, the Purchaser, upon request by the Seller, will estimate the amount required for correcting the defect or deficiency.

Whether the turnkey production method involves a public contract for construction work has not been decided or discussed by the Montana Supreme Court or in previous opinions of the Attorney General. A number of decisions from other jurisdictions reviewing the applicability of state competitive bidding statutes to turnkey projects contain no discussion of the issue here presented. See e.g., Lehigh Const. Co. v. Housing Auth., 56 N.J. 447, 267 A.2d 41, 42 (1970).

Whether the statute contemplates the application of the tax to turnkey contracts is a function of what the legislature intended, which intention is derived from the plain meaning of the language employed. Dunphy v. Anaconda, 151 Mont. 76, 79, 438 P.2d 660 (1968). A construction of the statute which will best give effect to that intent is mandatory. Great Northern v. Co. v. P.S.C., 88 Mont. 180, 206, 293 P. 294 (1930).

As discussed previously, a turnkey contract is a departure from the traditional legal vehicles utilized to procure public housing. Nevertheless, all of the essential elements identified in the language of the statute are present.

First, the contract is between a person and a public agency. Second, the value of the contract exceeds the sum of one thousand dollars. Third, the contract contemplates construction.

The series of contracts which characterize the turnkey method involve the construction of units which pass upon settlement into public ownership and which, although privately financed during construction, involve a series of enforceable governmental commitments of one hundred percent funding upon which private lenders rely.

While, as previously noted, the final agreement is denominated a contract of sale, the fact that what is sold in the agreement must first be constructed according to rigid guidelines leads to the unavoidable conclusion that this is a public construction contract within the meaning of the public contractors taxing statute.

Two opinions of the Supreme Court of Montana and amendments to this legislation throughout its history shed considerable light on the legislative intent. See Peter Kiewit Sons Co. v. State Board of Equalization, 161 Mont. 140, 505 P.2d 102 (1973); State ex rel. Schultz-Lindsay v. State Board of Equalization, 145 Mont. 380, 403 P.2d 635 (1965).

In Peter Kiewit, *supra*, the court described the recent legislative history of Title 15, chapter 50, as follows:

In March 1965, in an attempt to ensure the payment of state and local taxes by contractors working in the state, Chapter 277, Laws 1965, was passed by the legislature. The problem arose because some contractors working in the state did not report all of their equipment to county tax assessors, who were attempting to impose county property tax on those contractors. Also, some contractors working in the state would not file corporate personal income tax returns which would have fairly reflected their business profits from within the state. 161 Mont. at 143.

The 1965 tax applied only to non-resident contractors and therefore was declared unconstitutional on equal protection and other grounds in State ex rel. Schultz-Lindsay, *supra*.

In 1967 the Montana Legislature made an attempt, deemed successful by the Supreme Court in Peter Kiewit Sons, *supra*, to cure the constitutional deficiencies of the 1965 enactment. The statute, which presently continues substantially unchanged was characterized by the court as:

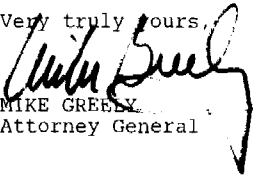
...a revenue enforcing measure designed to operate hand in hand with Montana's long standing personal property tax and income tax, to ensure more effective tax collection and reduce tax avoidance. 161 Mont. at 144.

Based upon this legislative intent, it is manifest that a construction of the statute to exclude the turnkey method of production of public housing units would frustrate the legislative goal. Such a construction would mean that by changing contract language any contractor could avoid the tax on projects it was intended to include.

THEREFORE, IT IS MY OPINION:

The turnkey method of production of new public housing units is a public contract subject to the public contractor's licensing tax.

Very truly yours,



MIKE GREELEY  
Attorney General