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RESERVE

MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA

1981 ISSUE NO. 20
PAGES 1245-1302



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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, 59620.

20-10/29/81

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a loose-leaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------|---|
| Known Subject Matter | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number. |
| Department | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
| | 3. Locate volume and title. |
| Subject Matter and Title | 4. Refer to topical index, end of title, to locate rule number and catchphrase. |
| Title Number and Department | 5. Refer to table of contents, page 1 of title. Locate page number of chapter. |
| Title Number and Chapter | 6. Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.) |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules. |
| Rule in ARM | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1981. This table includes those rules adopted during the period October 1, 1981 through December 31, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1981, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published.

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BEFORE THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF TIME CHANGE
of rules governing the operation) FOR PUBLIC HEARING ON
of the Montana Merit System) PROPOSED AMENDMENT OF
) RULES LOCATED IN CHAPTER
) 23, TITLE 2 GOVERNING
) THE OPERATION OF THE
) MONTANA MERIT SYSTEM

TO: All Interested Persons

1. On Wednesday, November 4, 1981, at 7:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, at Helena, Montana, to consider the amendment of rules governing the operation of the Montana Merit System. The amendment of rules was published in 2-2-77 of the 1981 MAR on page number 1120. The time of the public hearing is changed from 9:00 a.m. to 7:00 p.m., so that employees and other interested persons may attend.

By:


Charles J. Seifert, Chairman
Merit System Council

Certified to the Secretary of State October 13, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the REPEAL	)	NOTICE OF PROPOSED
OF RULES and the ADOPTION OF	)	REPEAL OF RULES RE-
NEW RULES relating to the	)	LATING TO HOLIDAYS
administration of holidays	)	AND HOLIDAY PAY AND
and holiday pay.	)	ADOPTION OF NEW RULES
)	
		NO PUBLIC HEARING
		CONTEMPLATED

To: All Interested Persons:

1. On December 1, 1981, the Department of Administration proposes to repeal Rules ARM 2.21.601 through 2.21.604 which pertain to holidays and holiday pay and adopt new rules in this matter.

2. The rules proposed to be repealed are on pages 2-677 through 2-679 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the Holidays and Holiday Pay Policy.

AUTH: Secs. 2-18-102, 2-18-603, MCA IMP: Secs. 1-1-216, 2-18-603

RULE II HOLIDAYS (1) "The following are legal state holidays," as provided in 1-1-216, MCA:

- (a) "New Year's Day, January 1;
- (b) Lincoln's Birthday, February 12;
- (c) Washington's Birthday, the third Monday in February;
- (d) Memorial Day, the last Monday in May;
- (e) Independence Day, July 4;
- (f) Labor Day, the first Monday in September;
- (g) Columbus Day, the second Monday in October;
- (h) Veteran's Day, November 11;
- (i) Thanksgiving Day, the fourth Thursday in November;
- (j) Christmas Day, December 25, and
- (k) State General Election Day."
- (2) "If any holiday" . . . falls on "a Sunday, the

Monday following is a holiday," . . . as provided in 1-1-216, MCA. If any holiday falls on Saturday, the Friday preceding will be a holiday.

(3) State primary election days are not state holidays.

AUTH: Secs. 2-18-102, 2-18-603, MCA IMP: Secs. 1-1-216, 2-18-603, MCA

RULE III HOLIDAY LEAVE ELIGIBILITY (1) A regularly scheduled full-time or part-time employee who is scheduled to work on the day on which the holiday is observed and is in a pay status either the last regularly scheduled working day before or the first regularly scheduled working day after a holiday is observed is eligible to receive appropriate paid holiday leave or compensation.

(2) A regularly scheduled full-time or part-time employee who is not scheduled to work on the day on which the holiday is observed shall receive appropriate alternate paid leave "either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled" by mutual agreement "by the employee and his supervisor . . . provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday," as provided in 2-18-603, MCA. This is to provide a day off in addition to the employee's regular day off.

(3) A regularly scheduled employee who is not in a pay status the last regularly scheduled working day before or the first regularly scheduled working day after a holiday is observed shall not receive paid holiday leave or compensation.

(4) An intermittent employee shall receive appropriate compensation for the holiday if the employee is in a pay status during the week in which the holiday falls.

(5) If a new employee or an employee returning from inactive status, or seasonal lay-off, reports to work on a day following a holiday, the employee will not receive compensation for the holiday.

(6) Paid holiday leave to which an employee is entitled may not be charged to any other type of leave.

(7) When an employee transfers to another agency immediately before a holiday and is in a pay status on the first working day after the holiday, the receiving agency shall pay the employee for the holiday.

AUTH: Secs. 2-18-102, 2-18-603, MCA IMP: Secs. 1-1-216, 2-18-603, MCA

RULE IV CALCULATION OF HOLIDAY PAY FOR REGULARLY SCHEDULED EMPLOYEES (1) A regularly scheduled eligible employee receives pay for a holiday (if scheduled to work on the holiday) or for an alternate leave day (if not scheduled to work on the holiday) based on the average number of hours scheduled to work per day in the pay period in which the holiday falls.

(2) To find the average, the number of hours scheduled to work in the pay period shall be divided by the number of working days in a pay period (10).

(3) The average for employees scheduled to work full time during the pay period is $80 \div 10$ or 8 hours.

(4) The average for part-time employees or employees on a reduced schedule for the pay period will be less than 8 hours.

(5) A job-sharing employee who has a regularly scheduled work week will receive pay for the holiday on the same basis as any other part-time employee.

AUTH: Secs. 2-18-102, 2-18-603, MCA IMP: Secs. 1-1-216, 2-18-603, MCA

RULE V CALCULATION OF PAY FOR HOLIDAY LEAVE FOR INTERMITTENT EMPLOYEES (1) An employee who works intermittent hours and is eligible for holiday pay will receive pay for the holiday based on the average number of hours worked for the full pay period preceding the holiday and the pay period in which the holiday is observed, not to exceed 8 hours.

(2) To find the average, the number of hours worked shall be divided by the total number of work days in the full pay period preceding the holiday and the pay period in which the holiday is observed, excluding the holiday(s) (normally 19.)

(3) A job-sharing employee who works intermittent hours will receive pay for the holiday on the same basis as any other intermittent employee.

AUTH: Secs. 2-18-102, 2-18-603, MCA IMP: Secs. 1-1-216, 2-18-603, MCA

RULE VI HOLIDAY WORK (1) An employee who is not exempt from the Montana minimum wage and hour laws contained in Title 39, chapter 3, part 4, MCA, and who works on a legal holiday shall receive appropriate paid leave the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by mutual agreement by the employee and his supervisor or shall be paid a minimum of 2 1/2 times the regular rate if no paid leave is provided as indicated.

(2) Granting of alternative holiday leave or premium pay is at the agency's discretion.

(3) An employee who is exempt from the Montana minimum wage and hour laws and is required to work on a legal holiday shall earn compensatory time on an hour-for-hour basis.

AUTH: Secs. 2-18-102, 2-18-603, MCA IMP: Secs. 1-1-216, 2-18-603, MCA

RULE VII CLOSING (1) This sub-chapter shall be followed unless it conflicts with negotiated labor contracts, which will take precedence to the extent applicable.

AUTH: Secs. 2-18-102, 2-18-603, MCA IMP: Secs. 1-1-216, 2-18-603, MCA

4. The rules are proposed to be repealed and replaced with reworded rules to implement new provisions of 2-18-603, MCA, which became effective October 1, 1981, and for clarity.

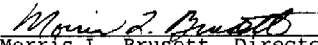
5. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption of the rules in writing no later than November 30, 1981, to:

Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, MT 59620

6. If a person who is directly affected by the proposed repeal of rules ARM 2.21.601 through 2.21.604 and the adoption of new rules 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: Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than November 30, 1981.

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

8. The authority of the department to make the proposed rules is based on section 2-18-102 and 2-18-603, MCA, and the rules implement sections 1-1-216 and 2-18-603, MCA.


Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State October 19, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the REPEAL	)	NOTICE OF PROPOSED REPEAL
OF RULES and the ADOPTION OF	)	OF RULES RELATING TO EM-
NEW RULES relating to	)	PLOYEE RECORD KEEPING AND
employee record keeping	)	THE ADOPTION OF NEW RULES
)	

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons:

1. On December 1, 1981, the Department of Administration proposes to repeal Rules ARM 2.21.6601 through 2.21.6604 which pertain to employee record keeping and to adopt new rules in this matter.

2. The rules proposed to be repealed are on pages 2-1511 through 2-1513 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the Employee Record Keeping policy.

AUTH: Sec. 2-18-102, MCA IMP: Sec. 2-18-102, MCA

RULE II POLICY (1) It is the policy of the State of Montana to:

(a) protect an employee's right of privacy, as well as the public's right to know, in the collection and maintenance of personnel data, pursuant to Article II, Sections 9 and 10 of the Constitution of the State of Montana and principles developed by the 1974 federal Privacy Protection Study Commission;

(b) collect and store personnel data which is relevant to an agency's purpose and to insure that records are accurate, timely and complete;

(c) inform employees about what personnel data is collected, why it is collected and who will have access to the information;

(d) Provide security systems which limit access to data and to operate under principles of confidentiality which govern who should have access to personnel data and when they should have access;

(e) grant employees the right to correct or dispute data;

(f) disclose confidential personnel data outside the agency only with the informed and voluntary consent of the employee or under a constitutionally-valid legal order;

(g) not make job-related decisions about an employee on the basis of secret files.

AUTH: Sec. 2-18-102, MCA IMP: Sec. 2-18-102, MCA

RULE III OBJECTIVES (1) It is the objective of this policy to establish record keeping practices in accordance with:

(a) Article II, Section 9, Constitution of the State of Montana, titled "Right to Know;"

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MAR Notice No. 2-2-80

of Montana, titled "Right of Privacy;"

(c) Title 2, Chapter 6, Montana Code Annotated, regarding public records and their management;

(d) Section 5-13-309, Montana Code Annotated, regarding the authority of the Legislative Auditor in relationship to records;

(e) Chapter 1-1300, Montana Operations Manual, Volume I, regarding records management;

(f) Principles of the Privacy Protection Study Commission, found in Personal Privacy In An Information Society, the Report of the Privacy Study Commission.

AUTH: Sec. 2-18-102, MCA IMP: Sec. 2-18-102, MCA

RULE IV DEFINITIONS As used in this sub-chapter the following definitions apply: (1) "Employee personnel documents" means paper documents maintained by each agency containing personnel data on an employee.

AUTH: Sec. 2-18-102, MCA IMP: Sec. 2-18-102, MCA

RULE V DOCUMENT REPORT (1) The following documents for employees may be kept in manual files:

- (a) personal:
 - (i) state application and/or resume of employee;
 - (ii) copy of designation of person authorized to receive decedent's warrants;
 - (iii) individual training records;
 - (iv) any records pertaining to hiring, promotion, transfer and selection for training or apprenticeship;
 - (v) enrollment in health insurance plans;
 - (vi) copies of any documentation for licenses or certifications for any applicable positions (e.g., nurses, doctors, teachers, etc.);
 - (vii) longevity computation, certification form and documentation of previous employment that affects employee benefits;
 - (viii) any other information that is essential to the operation of the agency;
 - (b) financial:
 - (i) all copies of payroll status forms affecting employees' pay and/or status;
 - (ii) W-4 forms;
 - (iii) employee leave record, time and attendance reports which may be kept separately for ease of access; combined with personnel file upon termination;
 - (iv) authorizations to deduct money from paycheck, such as health insurance premiums, credit union, savings bond and/or deferred compensation deductions, etc.;
 - (c) confidential:
 - (i) performance evaluations;
 - (ii) disciplinary matters;
 - (iii) personal problems requiring employee assistance;
 - (d) documents of separation:
 - (i) a copy of termination form;
 - (ii) letter of resignation
- (2) Files containing both active and inactive documents should be kept locked at all possible times.

(3) All documents shall be maintained for such periods as provided in Chapter 1-1300 of the Montana Operations Manual, Volume I, pertaining to records management.

(4) An employee's position title, dates and duration of employment and salary are public information and must be released on request. An agency may not require justification for the request. An agency may require that the request be in writing.

(5) Those having access to all of an employee's personnel documents, including confidential documents, are the employee; the direct supervisor; those persons above the direct supervisor in the direct line of authority, including the bureau chief, division administrator and department director; the central personnel file clerk, and the agency personnel/EEO officer.

(6) Others may obtain access to confidential documents only with the employee's informed and written permission or with a constitutionally-valid legal order.

(7) The office of the Legislative Auditor has access to personnel records pursuant to 5-13-309, MCA, for purposes of auditing state agencies.

(8) The Human Rights Division shall have access to personnel files related to complaints of discrimination.

(9) The professional staff of the state personnel division shall have access to all personnel documents when providing technical assistance at the request of agency managers and when gathering summary data on personnel programs or systems, when directly related to the subject.

(10) An employee should report errors of a clerical nature to the payroll/personnel clerk or officer in the employee's agency.

(11) An employee has the right within the agency to file a written rebuttal to data maintained in manual files, which will be retained with those files.

(12) Agencies should establish procedures for the filing and review of rebuttals to data maintained in manual files.

(13) An employee has a right to file a grievance within the agency on data maintained in personnel files, consistent with provisions in policy, collective bargaining agreements or statute allowing grievances.

AUTH: Sec. 2-18-102, MCA IMP: Sec. 2-18-102, MCA

RULE VI CLOSING (1) This sub-chapter shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

AUTH: Sec. 2-18-102, MCA IMP: Sec. 2-18-102, MCA

4. The rules are proposed to be repealed and replaced to incorporate a recent attorney general's opinion and to clarify procedures concerning employee record keeping.


5. Interested parties may submit their data, views or arguments concerning the proposed repeal of rules and adoption of new rules in writing no later than November 30, 1981, to:

Administrator, Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

6. If a person who is directly affected by the proposed repeal of rules ARM 2.21.6601 through 2.21.6604 and the adoption of new rules 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: Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than November 30, 1981.

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

8. The authority of the agency to make the proposed repeal of rules and adoption of new rules is based on section 2-18-102, MCA, and the rules implement section 2-18-102 MCA.



Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State October 19, 1981.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC HEARING FOR
of new rules I through IX,) ADOPTION OF NEW RULES I THROUGH
inclusive, regulating the) IX, INCLUSIVE, REGULATING THE
keeping, importation and sale) IMPORTING, KEEPING AND SALE OF
of alfalfa leafcutting bees.) ALFALFA LEAFCUTTING BEES.

TO: All Interested Persons:

1. On November 19, 1981 at 8:30 a.m., a public hearing will be held in Room 225 of the Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, to consider the adoption of new rules relating to the importation, keeping and selling of alfalfa leafcutting bees.

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

3. The proposed rules provide as follow:

RULE I. PURPOSE OF RULES (1) To implement Senate Bill 363 enacted by the 1981 Montana Legislature (80-6-1101 MCA et seq.).

RULE II. DEFINITIONS As used in this (act) the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species *Megachile rotundata* (F), commonly known as the alfalfa leafcutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the department to determine whether they meet the required health standards.

(3) "Committee" means the alfalfa leafcutting bee advisory committee established in (section 4).

(4) "Department" means the department of agriculture established in 2-15-300.

(5) "Equipment" means grooved boards, shelters, trays, incubators, cell removers, tumblers, and other apparatus used in rearing bees.

(6) "Nesting materials" means equipment, laminates, and other apparatus used in nesting bees.

(7) "Parasite" means an organism living in or on any stage of the alfalfa leafcutting bee obtaining nutriment from the body of the bee.

(8) "Pathogen" means any organism, parasitic or otherwise, that causes disease in the alfalfa leafcutting bee.

(9) "Person" means an individual, association, partnership, or corporation.

(10) "Wild trap" means to trap bees on property not owned by the trapper. AUTH: Sec. 80-6-1103, MCA IMP: Sec. 80-6-1103, MCA

RULE III. STANDARDS FOR CERTIFICATION (1) Unconditional Alfalfa Leafcutting Bee Certification -- Bees that have been officially examined and analyzed and found to contain no more than 10% infestation by the parasites listed below, and which contain no more than 0.2% infestation by the pathogens listed below, shall be eligible for certification for import into the state of Montana, or for possession or sale within this state.

(2) Restricted Alfalfa Leafcutting Bee Certification -- Bees that are officially reported as containing parasite infestation levels between 10% and 25%, or pathogen infestation levels between 0.2% and 10% should be designated as being under restricted certification, and may not be sold, transferred, or distributed without prior written approval of the department.

(3) Parasites and pathogens that the bees are to be specifically examined and analyzed for are:

Parasites:

- (a) Minute chalcid (*Tetrastichus megachi*)
- (b) Sapyga wasp (*Sapyga pumila*)
- (c) Canadian chalcid (*Pteromalus venustus*)
- (d) Imported Chalcids (*Monodontomerus obscurus*)
- (e) Checkered flower beetle (*Trichodes ornatus*)

Pathogens:

- (a) Alfalfa leafcutting bee chalkbrood (*Ascosphaera* sp.)

(4) One year after the effective date of the minimum standards for certification as defined by (1) Unconditional Alfalfa Leafcutting Bee Certification, the department upon recommendation of the advisory committee shall upgrade the standard to read as follows: (1) Unconditional Alfalfa Leafcutting Bee Certification -- Bees that have been officially examined and analyzed and found to contain no more than 10% infestation by the parasites listed below, and which contain no (0%) infestation by the pathogens listed below, shall be eligible for certification for import into the state of Montana, or for possession or sale within the state. AUTH: Sec. 80-6-1103 MCA IMP: Sec. 80-6-1103, MCA

RULE IV. ALFALFA LEAFCUTTING BEES NOT MEETING CERTIFICATION STANDARDS (1) Bees that are officially reported as containing parasite infestation levels above 25% or pathogen levels above 10% shall be designated as failing minimum certification standards. The bees and associated nesting materials shall be placed under quarantine and may be destroyed or removed from the state under department supervision within 30 days of the issuance of said designation. AUTH: Sec. 80-6-1103 MCA IMP: Sec. 80-6-1103, MCA

RULE V. CERTIFICATION OF IMPORTED ALFALFA LEAFCUTTING BEES (1) Bees Imported into Montana must meet the standards for Unconditional Alfalfa Leafcutting Certification set forth in Rule III(1). Bees that do not meet these certification standards shall not be released for distribution or other delivery within the state. The exporter/importer of the bees shall be notified by certified mail of the fact of non-certification, together with a notice that the said bees must be removed from the state of Montana, at exporter's/importer's expense, within 30 days, or the said bees will be destroyed. AUTH: Sec. 80-6-1103 MCA IMP: Sec. 80-6-1103, MCA

RULE VI. ALFALFA LEAFCUTTING BEE SAMPLING PROCEDURE The following procedure shall be used to sample bees under the bee certification program:

(1) All bees must be in loose cell stage before samples can be taken.

(2) A one ounce sample shall be taken from each 20 pounds of bees owned or possessed by a beekeeper.

An official sample size shall not consist of less than

eight ounces (8 oz.).

If the beekeeper owns or possesses more than 400 pounds, then the cocoon larvae will be divided into 400 pound lots and official samples shall be obtained from each lot.

All official samples shall become the property of the department.

(3) Once the official sample has been obtained, the remaining composite sample shall be officially sealed and left in the possession of the grower.

(4) All samples shall be collected using a random sampling procedure, i.e., a uniform sample from the top, middle, and bottom within the bee storage containers.

(5) All official samples will be obtained by designated department personnel in the presence of the owner/manager of the bees.

(6) All official sample containers will be sealed with a label showing lot number, date/time sampled, and signature of department employee.

(7) All official sample lot numbers must correspond with lot numbers attached to beekeeper storage containers. AUTH: Sec. 80-6-1103, MCA IMP: Sec. 80-6-1103, MCA

RULE VII. CERTIFICATION PROCEDURES AND FEES (1) All requests for certification shall be made on forms provided by the department. The required certification fee shall be transmitted with the request for each certification.

(a) Import Certification -- All bees proposed to be imported into Montana shall be delivered on or before April 15 to the examination/analysis laboratory located at Montana State University, Bozeman, Montana, where they shall be examined and analyzed following the submission of a request for certification and payment of appropriate fees.

(b) Annual Certification -- Any person owning or possessing bees within Montana shall make, on or before October 1 of each year, a request for re-certification and arrange for sampling each year of said possession and pay assessment fees thereon.

(i) A certification fee of \$3.00 per bee box per year. Nesting materials containing 3,000 nest tunnels shall be designated as one bee box, regardless of the composition of the nesting materials.

(c) Any person owning or possessing bees within the state of Montana that are not ready for certification sampling on or before January 31 of each year, shall pay a penalty of \$25.00 in addition to the certification and sampling fees regularly required, and in addition, shall pay the mileage and per diem required for the department inspector to draw the official samples required for re-certification. Bees that are in the loose cell stage will be considered ready for sampling.

(2) All sales of bees shall be reported to the department as follows:

(a) All sales made during the preceding year shall be reported to the department on each application for annual certification giving name, address and location of the new owner.

(b) The department shall be notified of all sales or termination of bee operations. These sales shall be reported

to the department in writing stating the name, address and location of the new owner. AUTH: Sec. 80-6-1103 MCA IMP: Sec. 80-6-1103, MCA

RULE VIII. SAMPLING/ANALYSIS FEES (1) Each person requesting certification or annual re-certification shall pay a laboratory analysis fee of \$25.00 per sample, for each official certification or re-certification sample submitted. The payment for each sample shall be transmitted at the time of sampling. AUTH: Sec. 80-6-1103 MCA IMP: Sec. 80-6-1103, MCA.

RULE IX. FOR THE PURPOSE OF DISEASE CONTROL - WILD TRAPPING PERMIT PROCEDURE (1) A person intending to engage in wild trapping shall apply to the department for a permit prior to commencing trapping activities.

(2) The person applying for a permit shall obtain the signature of the property owner on which the bees are to be wild trapped.

(3) Any person keeping bees or nesting materials on property other than their own, shall clearly mark the trapping material with his or her correct name, mailing address and phone number. The lettering shall not be less than one inch in size.

(4) The application for a permit to wild trap shall contain: name, address, phone, location of wild trapping activities (1/4 section, township, range), number of bee boxes, and permission of property owners. AUTH: Sec. 80-6-1103 MCA, IMP: 80-6-1103, MCA

4. The department is proposing to adopt the foregoing rules to implement the new 1981 Legislative enactments.

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 Oran Roy Bjornson, at room 110, Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, no later than November 26, 1981.

6. Clyde Peterson, Room 312, Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on section 80-6-1103 MCA, and the rule implements section 80-6-1103 MCA.

BY: W. Gordon McOmber
W. Gordon McOmber, Director
Montana Department of Agriculture

Certified to the Secretary of State October 15, 1981

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PUBLIC HEARING FOR
ment of Rules 4.12.1012 and) PROPOSED AMENDMENTS OF RULES
4.12.1013 ARM.) 4.12.1012 and 4.12.1013
)

TO: All Interested Persons:

1. On November 20, 1981, at 10:00 a.m., a public hearing will be held in Room 225 of the Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana to consider the amendments of the Administrative Rules of Montana, all as set forth herein.

2. The proposed amendments relate only to the various fees amounts to be charged. The USDA user fee set forth under emergency Rule I is included in the following proposed fee schedule. Increased fees are necessary to continue services to the grain industry. Costs to provide these services have increased substantially due to inflationary factors experienced since the February 1, 1975 increase. The rules proposed to be amended, as they presently exist, may be viewed in the current version of ARM, pages 4-407, 408 and 409; or a complete copy may be obtained from Mr. Oran Roy Bjornson, Administrator, Plant Industry Division, Montana Department of Agriculture, Room 110, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620 0209.

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

4.12.1012 GRAIN FEE SCHEDULE (1) The Department has adopted a revised schedule of fees to be charged by the State Laboratories at Great Falls, Montana.

SCHEDULE OF FEES AND CHARGES

Official Lot Inspection - bulk, car , <u>boxcar</u> or truck {all grain including mustard} <u>{all grains}</u>	\$5.25	\$10.00
Official Lot Inspection - "hopper car"	7.50	13.50
Dual Grade or Set-up-hopper, car , <u>truck</u> , regular fee for each portion graded; Submitted Sample Inspection or factor information only	2.50	4.00
Factor Determinations (per factor)		2.00
<u>Protein Tests</u>	2.00	
Sampling only - bulk, car , <u>boxcar</u> or truck <u>{all grains}</u>	2.75	6.00
Sampling only - hopper car	5.00	9.00
Protein Tests		3.00
Dry Basis		3.50
Moisture Tests - grain {Motomee} <u>{oven}</u>	1.00	3.00

Moisture Tests-mustard, feed or flour (Oven) . . .	2-25	
Protein Test-feed and barley (Dry-Basis)	2-50	
Malting Barley Analysis	1-75	2.50
Certification of a factor that does not affect grade	1-00	
Copies of Certificates, grade and weight.	1-00	2.00
Copies of Certificate, protein -----	50	
Special Service Fee (immediate handling per sample, telephone reports, etc.)		2.00
Sedimentation Test -----	3-50	
Weighing, per ear -----	4-00	
Weighing rate, per hour -----	4-00	
Special Service Fee - (immediate handling per sample, telephone reports, etc.)	1-25	
Mailing Samples of Samples - (Minimum-charge) (per sample - plus postage)	1-00	2.00
Sampler or inspector - straight time, rate per hour		
Inspector - Sampler (per man hour, straight time).	6-00	10.00
(overtime)		15.00
Stowage Examination (minimum 1 hour)		10.00
Mileage (rate per mile) . . . . .		.20
Special Trip (per hour)		10.00

Special inspection of grain - charged by hourly rates and mileage.

Re-inspection (original grade sustained) - regular fee during routine inspection.

Re-inspection (original grade changed) - regular sampling fee during routine inspection tour.

Retest (original protein test sustained) - regular protein in fee plus sampling fee during regular inspection tour.

Retest (original protein test changed) - differences of more than 0.2% - regular sampling fee during routine inspection tour.

In case of a material error in grade or protein, a corrected certificate will be issued without a fee.

The regular fees apply for one trip per day to each railroad yard or to each elevator. If it is necessary to make a second or special trip by vehicle to a railroad yard, elevator, mill or other locations there will be an additional charge of \$6.00 \$10.00 per hour (minimum of one hour). When services are needed which required require the department employee to incur additional expenses such as mileage, meals, lodging, etc., such additional costs, based on state schedule, shall also be charged in addition to all fees and service charges.

AUTH: Sec. 80-4-119 MCA; IMP, 80-4-113 MCA and 80-4-119 MCA

4.12.1013 SAMPLE LOT INSPECTION SERVICE (1) A revised schedule of fees to be charged by the State Laboratory at

Great Falls, Montana. The fee schedule is as follows:

Schedule of Fees and Charges

Sample Lot Inspection Services


Warehouses: Elevators, etc.

Regular Time Hourly Rate	\$6.00	\$10.00
Overtime Hourly Rate	9.00	15.00
Sec. 80-4-119 MCA and 80-4-113 MCA; IMP, 80-4-113		
MCA and 80-4-119 MCA		

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 Clyde Peterson, hearing office, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than 5:00 p.m. on November 30, 1981.

6. Clyde Peterson, Department Attorney, Montana Department of Livestock, Agriculture/Livestock Building, Capitol Station, Helena, Montana has been designated to preside over and conduct the hearing.

7. The authority of the agency to enact the rules and the amendments is Sections 80-4-113 and 80-4-119 MCA.


W. Gordon McOmber, Director
Montana Department of Agriculture

Certified to the Secretary of State, October 19, 1981.

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of Rules 12.6.501 through) ON PROPOSED AMENDMENT OF
12.6.513 relating to) RULES 12.6.501 THROUGH
outfitters and professional) 12.6.513 AND REPEAL OF RULE
guides regulations; Repeal) 12.6.510 -- OUTFITTERS AND
12.6.510 Residency and Age) PROFESSIONAL GUIDES QUALIFI-
Requirements.) CATIONS

TO: All Interested Persons.

1. On February 12, 1982, at 10:00 a.m., a public hearing will be held in the Fish & Game Commission Room, Department of Fish, Wildlife, & Parks, 1420 E. 6th Ave., Helena, Montana to consider the amendment of Rules 12.6.501 through 12.6.513.

2. The proposed amendments replace present rules 12.6.501 through 12.6.513 found in the Administrative Rules of Montana. The proposed amendments would change current rules to reflect 1981 legislative changes in outfitting statutes, delete and modify current language for clarity of meaning, and make modifications and additions to current rules to reflect current outfitting operations.

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

12.6.501 OUTFITTER LICENSES (1) No person, company, or corporation shall engage in the business of outfitting without first having obtained from the department an outfitter's license of one of the kinds or types hereinafter described as follows:

(a) A general license authorizing one to be engaged in the business of outfitting for hunting or fishing parties, and or to ~~providing~~ provide any saddle and pack animals, or ~~guide service, and related services for~~ personal services on back country or wilderness pack trips of more than one day duration, ~~and who may in addition provide other equipment or vehicles for the purpose of assisting any person in catching fish or locating and pursuing game animals or both for hunting or fishing parties;~~ or to also provide camping equipment, vehicles, or other conveyance, for any person to hunt, trap, capture, take, or kill any game animal or to catch fish and to accompany such a party or person on an expedition for any of these purposes.

(b) A special license authorizing the outfitter to perform only the function of outfitting listed on the license in accordance with the following classifications:

(i) Class I - special outfitter license for taking hunting parties out from a permanent base of operations for day trips only;

(ii) Class II - special outfitter license for taking fishing parties out from a permanent base of operations for

day trips only;

(iii) Class III - special outfitter license providing for a temporary camp for a specialized purpose for taking fishing parties out from a permanent base of operations for trips of more than one day.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.502 OUTFITTER STANDARDS (1) No outfitter shall may be issued a license unless ~~and until such standards and requirements shall be met and maintained at all times as set forth in rules 12.6.503 through 12.6.510.~~

(a) The applicant has passed the written outfitter examination with a minimum score of 75%;

(b) The applicant has demonstrated, in a field examination, ability to use and maintain all equipment or stock listed in his application;

(c) The applicant has provided proof of ownership or control of the equipment listed in his application;

(d) The applicant has furnished proof of liability insurance for the outfitting services he provides. Minimum insurance will be \$10,000 for property damage, \$100,000 for personal injury to one person, and a total of \$300,000 for personal injury to more than one person.

(2) Written and field outfitter examinations shall be given at headquarters for each region (Kalispell, Missoula, Bozeman, Great Falls, Billings, Glasgow, and Miles City) and at the Helena office twice a year as announced. The written test shall be administered by enforcement personnel designated by the department. Applicants will be advised by mail of success or failure. The field examination shall be given at times and places to be announced.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.503 OUTFITTER EQUIPMENT AND SUPPLIES (1) Equipment necessary An outfitter shall own or control the following equipment:

(a) First-aid kit----up-to-date-and-suitable-for-size and-type-operation Medical supplies sufficient to supply basic first-aid and stabilize injuries. Base camps and spike camps shall have, as a minimum the following: adhesive bandages, sterile pads, flexible gauze bandages, roller bandages, triangular bandages, first-aid tape, safety pins, scissors, splints, antiseptic, aspirin, and a first-aid manual.

(b) Transportation, equipment shelter, equipment, and food suitable sufficient for the number of guests served and for the type kind of outfitting operation conducted.

(c) All outfitters operating on public lands during the fire season shall be equipped with an axe and shovel in serviceable good condition, each of which shall be not less than 30 inches in length overall, and a bucket and/or a waterbag of not less than 2-gallon capacity. Campfires shall never be left unattended and shall be completely extinguished before leaving them unattended. Fires discovered shall be quenched extinguished whenever possible ~~or~~ and reported to the

proper authorities ~~at the first opportunity~~. All campfires ~~shall be completely extinguished before leaving them unattended~~.

(d) Every vessel ~~embarking on a river float trip shall have a minimum of one extra oar or paddle aboard~~ used in an outfitting business shall comply with all the requirements of Title 23, Chapter 2, Part 5, MCA, and its implementing rules; and in addition, all such vessels will have at least one extra paddle or oar aboard.

(2) All new applicants, resident and nonresident, must have their outfitting equipment available for inspection by enforcement personnel prior to issuance of license.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.504 SANITATION REQUIREMENTS AND LIVESTOCK (1) At all camps, the outfitter shall construct necessary facilities for handling stock and maintaining a sanitary camp where such facilities are allowed by special use permits of the particular forest or area. Pit toilets shall be lined as needed when in use and covered with earth when a camp is not occupied in use ~~for several months~~. Under all circumstances these toilets shall be located not less than 100 feet from any surface water and they shall not be constructed in a manner that is likely to contaminate ground waters. The ~~pit~~ bottom of a toilet must be at least 4 feet above ground water.

(2) All livestock corrals must be at least 100 feet from any surface water.

(3) When natural feed is not available, or when it is inadequate for the number of livestock in the camp, the outfitter shall supply supplemental feed adequate to maintain all livestock for the time spent at that campsite.

(4) No outfitter may subject any animal to abuse or to cruel and inhumane treatment.

(5) The outfitter shall not leave any litter and shall carry or pack out all unburnable refuse from his campsite. When permitted by state or federal law or regulation, garbage shall be burned daily.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.505 RATE SCHEDULE (1) Upon request by of a client, the outfitter shall furnish a schedule of rates charged for the services offered.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.506 CAMP RESTRICTION (1) Camps shall not block trails or interfere with public use of public roads, trails, and facilities.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.507 PROTECTION OF PRIVATE PROPERTY (1) Outfitters shall exercise diligence in protecting from damage all private lands and property of others upon which the outfitter or client thereof may enter upon, or in proximity to such lands

~~or property and such lands and property covered by and used in connection with the outfitter's operation~~ and also any lands in proximity to the area covered by and used in connection with the outfitter's operation.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.508 RECORDS (1) True, complete, and accurate outfitter records, as defined herein, will be filed with the department regional supervisor for the region in which the outfitter is licensed. Such records must be filed relating to the license year immediately preceding the expiration date of the outfitter's license. No outfitter's license ~~will~~ may be renewed unless ~~and until~~ such records are filed as provided herein. True, complete, and accurate records are ~~defined for the purpose of this regulation as~~ those which contain:

- (a) complete name and address of outfitter;
- (b) outfitter's license number and year issued;
- (c) dates of service to each client;
- (d) complete name and address of each client as the same appears on the client's fishing or hunting license;
- (e) number, sex, age, and species of big game and game birds taken;
- (f) client's license number(s), by species;
- (g) whether or not the client fished;
- (h) statement identifying each identification of every hunting district in which hunted by each client hunted or fished, by drainage and of every drainage fished by each client.

(2) Prior to the filing of records, as herein required, and at all reasonable times, each outfitter shall make available for inspection and inquiry by enforcement personnel of the department, all or any portion of his records or information required to be in such records as hereinabove provided. The said records shall at all times be maintained as confidential information and no part of same shall be released to persons or organizations outside the department unless such release is first approved by the director, or ~~except as may be otherwise~~ required by law.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.511 HUNTING AND FISHING LICENSES (1) ~~Current hunting or fishing licenses must be obtained by, and must at all times be in the possession of, every outfitter and guide during the times that he is engaging in outfitting or guiding, as hereinafter provided.~~

~~(a) --While a resident outfitter or guide is outfitting or guiding for deer or antelope hunting parties in those areas or districts of the eastern portion of the state of Montana where there are only deer and antelope seasons available --- a~~

class-A-37-deer-A-tag-

(b)--While-a-resident-outfitter-or-guide-is-outfitting or-guiding-for-deer, elk, or-other-big-game-hunting-parties in-these-areas-other-than-those-specified-in-(a)-above--- a-class-A-37-deer-A-tag, and-a-class-A-5-elk-tag.

(c)--Any-nonresident-person-who-is-an-outfitter-or-guide and-is-outfitting-or-guiding-for-deer-or-antelope-hunting parties-in-these-areas-or-districts-of-the-eastern-portion-of the-state-of-Montana-where-there-are-only-deer-and-antelope seasons-available----a-class-B-7-(nonresident)-deer-license, and/or-a-special-(nonresident)-antelope-license, or-a-B-10 (nonresident)-big-game-combination-license.

(d)--While-any-nonresident-person-who-is-an-outfitter-or a-guide-is-outfitting-or-guiding-for-deer, elk, or-other-big game-hunting-parties-in-these-areas-other-than-those-specified in-(e)-above----a-class-B-10-(nonresident)-big-game-combina- tion-license.

(e)-All-outfitters-or-guides, whether-resident-or-non- resident, outfitting-or-guiding-for-bird-hunting-or-fishing parties-shall-have-the-current-appropriate-license-therefor. Every outfitter and professional guide shall hold a wildlife conservation license valid for the license year in which he is outfitting or guiding and shall keep on his person such conservation license at all times that he is engaged in outfitting or guiding.

(2) An-outfitter-shall-sign-the-license-of-any-client from-whom-he-receives-any-form-of-compensation. The outfitter who employs a professional guide shall assure the department that the professional guide is properly licensed for the license year in which the guide is employed by the outfitter.

(3) At no time may an outfitter or employee of an out- fitter shoot, kill, or take any game animal or bird or fish for which he does not hold a valid hunting or fishing license.

(4) Outfitters and their employees may not shoot, kill, or take game animals for or in competition with those employing them while employed as an outfitter or an outfitter's employee.

(5) Any outfitter or outfitter's employee who shoots, kills, or takes any game animal at any time during which those employing him have not yet taken the particular game animal sought will be considered to be shooting for or in competition with them while acting under employment as an outfitter.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.513 LICENSE REVOCATION (1)--The-wildlife-censer- vation-license-of-a-resident-guide-may-be-suspended, revoked, or-denied-if-the-previous-year's-records-are-not-submitted.

(2) (1) Any outfitter or professional guide's license is subject to revocation ~~under breach for violation of any of these regulations or upon breach of any of the laws of Montana relating to outfitting or guiding or upon the filing of a false application, report, or record materially false in any respect, and such false application, report, or record shall be a breach of these regulations~~ for violation of any section of Title 87, Chapter 4, Part 1, MCA.

(2) The filing of a materially false application, report, or record shall be a violation of these regulations.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

12.6.514 LICENSE RENEWAL (1) If an outfitter sells his business or allows his license to lapse for two years, he shall then be treated as a new applicant and required to take the test.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA

4. The rule proposed to be repealed can be found on page 12-317 of the Administrative Rules of Montana. (12.6.510)

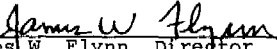
5. The rule is proposed to be repealed because the Supreme Court of Montana, in Godfrey v. Montana State Fish & Game Commission, Mont. ___, 38 St.Rep. 661 (1981), declared unconstitutional the department's statutory limitations on residency on which the rule is based.

6. The department is proposing these amendments on behalf of the Montana Outfitters Council and on its own behalf to make changes required by 1981 legislative action, to clarify present wording, to make modifications to the regulations based upon current outfitting practice, and to support the outfitting profession's efforts to upgrade the services it provides the recreating public.

7. 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 Stan Bradshaw at the department's Helena address no later than February 12, 1982. NOTICE: The department requests special attention and specific comments and suggestions for treatment of outfitter experience standards (12.6.509), hunting in competition (12.6.512), and license renewal (12.6.514).

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

9. The authority of the agency to make the proposed amendments is based on Section 87-4-106, MCA, and the rules implement Part 1, Chapter 4, Title 87, MCA.


James W. Flynn, Director
Department of Fish, Wildlife, & Parks

Certified to Secretary of State October 19, 1981

20-10/29/81

MAR Notice No. 12-2-103

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of rules 16.28.706,	)	AMENDMENT OF RULES
setting requirements for	)	ARM 16.28.706
conditional enrollment; and	)	AND ARM 16.28.714
16.28.714, requiring report-)	
ing whenever a child is	)	(Immunization)
excluded from school for)	
failure to comply with the)	
law)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 4, 1981, the department proposes to amend rules 16.28.706, which sets requirements for conditional enrollment; and 16.28.714, which requires reporting whenever a child is excluded from school for failure to comply with the law.

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

16.28.706 REQUIREMENTS FOR CONDITIONAL ENROLLMENT (1) A person may be admitted to school on a conditional basis if a physician or local health department indicates on the department's conditional enrollment form that immunization of the person has already been initiated by receiving, at a minimum, one DTP, (or DT or Td), one polio, one measles (after the first birthday, and one rubella vaccination (unless rubella is not required because the person is a female 12 years of age or older). If a person is exempt from any of the foregoing vaccinations, the requirements of this rule apply to the remaining immunizations for which no exemption exists.

(2) Conditional enrollment must be for a reasonable length of time consistent with the immunization schedule in subsection (4) below, in order to allow for completion of all immunization requirements, but in any case must not exceed 90 days from the date of enrollment.

(3) The conditional enrollment form provided by the department must be used to document conditional enrollment status and must be retained in the person's school record.

(4) A person who is conditionally enrolled qualifies for unconditional enrollment when he receives the following number of doses of each vaccine, and at intervals of no less than four weeks:

Number of Polio Doses Person Has Received:	Person Needs
1	2
2	1
3	0
4	0

3 or more, but none after 4th birthday
(If enrolled for first time after
July 31, 1980)

MAR Notice No. 16-2-198

20-10/29/81

Number of DTP, DT, or Td Doses Person Has Received:	Under 7 Years of Age -- Additional DTP or DT Doses Needed:	7 Years of Age or Older -- Additional TD Doses Needed:
1	2* 3	2*
2	2	1
3	1	0
4	0	0
3 or more, but none since 4th birthday	1	1
(If enrolled for first time after July 31, 1980)		

*A booster dose 8-14 months following the third dose is recommended. Td boosters are also recommended every 10 years.

(5) If the person who is conditionally enrolled fails to complete immunization within the time period indicated in subsection (2) above, he must either claim an exemption from the immunizations not received and documented, or be excluded from school by the board of trustees, in the case of a public school, by the administrator, in the case of a private school, or by the designee of either.

Authority: Sec. 20-5-407, MCA

Implementing: Sec. 20-5-402, 20-5-404, 20-5-408, MCA

16.28.714 REPORT OF NON-COMPLIANCE (1) If a person is excluded from school due to the failure to complete provide documentation of completed immunization, claim an exemption, or qualify for conditional enrollment, the school must place in the U.S. mail notice of that fact to the following by the end of the third day following the exclusion, occurs, if the person excluded has not returned to school with the required documentation:

- (a) the local health officer; and
- (b) the Preventive Health Services Bureau of the department (phone: 449-4740).

Concurrent telephone notification of either or both of the above agencies is encouraged but not required.

(2) The notification must include the name of the excluded person; his or her address; the name of his or her parent(s), guardian or responsible adult; and the date of exclusion.

(3) Written documentation of that notification must be placed in the school file, if any, of the person excluded, or in a special file established for such documentation, if the person has no school file. Such documentation must include the information noted in (2) above, date of mailing, and name of the individual giving the notification.

Authority: Sec. 20-5-407, MCA

Implementing: Sec. 20-5-408(2), MCA

3. The amendments to ARM 16.28.706 are to conform the requirements for conditional enrollment and completion of immunization of a conditionally enrolled child to the requirements for unconditional enrollment in ARM 16.28.702. The amendment to ARM 16.28.714 relaxes the reporting requirement for schools which have had to exclude children because of failure to comply with the law and rules by requiring such reporting only if a child continues to be excluded the third days after initial exclusion, in recognition of the fact that most students are back in school before that time.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption in writing to Robert L. Solomon, Room B101, Cogswell Building, Helena, MT, 59620, no later than November 30, 1981.

5. If a person who is directly affected by the proposed action 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 Robert L. Solomon, Room B101, Cogswell Building, Helena, MT, 59601, no later than November 30, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, 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 in excess of 25, based on the fact that the rule changes potentially may affect any school or school-age child in the state.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 19, 1981

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

In the matter of the	)	NOTICE OF PROPOSED
adoption of a rule setting	)	ADOPTION OF RULE
laboratory fees for analyses)	
of private household water	)	(Laboratory Fees)
supplies)	
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 15, 1982, the board proposes to adopt a rule setting laboratory fees for analyses of private household water supplies.

2. The proposed rule provides as follows:

RULE I LABORATORY FEES (1) Fees for analyses of private household water supplies by the department laboratories are as follows:

(a) The fee for a standard chemical analysis (indicates amount of calcium, magnesium, sodium, iron, sulphate, fluoride, nitrate, chloride, hardness, alkalinity, pH, specific conductance, and calculated dissolved solids) is \$61.

(b) The fees per analysis to determine the concentration of individual constituents are:

(i)	sodium	\$5.00
(ii)	iron	5.50
(iii)	fluoride	6.00
(iv)	nitrate	5.40
(v)	hardness	6.50
(vi)	specific conductance	3.80

(c) An analysis to determine the concentration of fluoride or sodium which is prescribed in writing by a dentist or physician is free of charge.

3. The board is proposing this rule in order to establish the fees the department may charge for analyses of private household water supplies.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption in writing to Sandra R. Muckelston, Room C216, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than January 13, 1982.

5. If a person who is directly affected by the proposed action 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 Sandra R. Muckelston, Room C216, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than December 1, 1981.

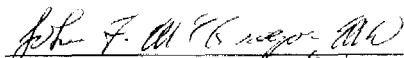
6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from


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MAR Notice No. 16-2-199

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 in excess of 25, based on the fact many Montana households have individual water supplies.

7. The authority of the board to make the proposed amendment is based on section 75-6-103(2)(b), MCA. and implements section 75-6-103(2)(b), MCA.


JOHN F. MCGREGOR, M.D., Chairman

By: 
JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State October 19, 1981

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule	)	AMENDMENT OF RULE
23.14.412	)	23.14.412
	)	(Qualifications for Certifi-
	)	cation of Law Enforcement
	)	Academy and Training
	)	Courses)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 16, 1981, the Board of Crime Control proposes to amend rule 23.14.412 which provides for the certification of the Law Enforcement Academy and training courses.

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

23.14.412 QUALIFICATIONS FOR CERTIFICATION OF LAW ENFORCEMENT ACADEMY AND TRAINING COURSES

Sections (1) through (3) remain the same. Section (4) (a) and (4) (b) remain the same.

(c) To receive certification, any training conducted in Montana must be administered by the academy. Regional training courses must be specialized training for all agencies and not in-service training applicable to the needs of only one agency. Such courses must be at least 15 hours in length, be presented on consecutive days, must not be less than 6 hours a day and the last day may not be less than 3 hours. The agency requesting a regional training course must show a need for the course exists and can demonstrate the need. Each course must be advertised and open to all other agencies in the area or region of the requesting agency.

3. The amended rule defines regional training courses and establishes the requirements for such courses. The need for the definition and requirements arises because too many local law enforcement agencies are requesting regional training courses be provided by the Academy that are, in essence, short in-service training applicable to only the requesting agency. When the Academy staff arrives to administer the course they find only a small number of students are in attendance and representative of maybe only one or two agencies. This is not cost effective and does not represent the purpose of regional training courses.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, 303 North Roberts, Helena, Montana 59620 no later than December 15, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments

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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 Mr. Bain no later than December 15, 1981.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 145 persons based on the number of peace officers registered with the P.O.S.T. Advisory Council.

7. The authority to make the proposed amendment is based on Section 44-4-301 MCA. The implementing authority is contained in Section 7-32-303 MCA, and Section 7-32-4112 MCA.


(Administrator)

Certified to the Secretary of State on October 9, 1981

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule	)	AMENDMENT OF RULE
23.14.402	)	23.14.402
	)	(Minimum Standards for
	)	the Employment of Peace
	)	Officers)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 16, 1981, the Board of Crime Control proposes to amend Section 23.14.402 which provides for the minimum standards for the selection and employment of peace officers in Montana.

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

23.14.402 MINIMUM STANDARDS FOR THE EMPLOYMENT OF PEACE OFFICERS

Sections (1) through (2)(a) remain the same.

(b) Be at least ~~20~~ 18 years of age.

3. The amended rule sets forth the minimum age requirement for the employment of peace officers in Montana. Section 7-32-4112 MCA contained conflicting statements regarding the minimum age for the employment of police officers. One sentence stated the minimum age as not less than 20 years and another sentence stated the minimum age as not less than 18 years. The legislature amended Section 7-32-4112 MCA to state the minimum age as not less than 18 years. The Montana Constitution in Article II Section 14 states the age of majority as age 18 or older. The Board of Crime Control proposes to adopt the above rule to conform with the requirements of the Montana Code Annotated and the Montana Constitution.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, 303 North Roberts, Helena, Montana 59620 no later than December 15, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Bain no later than December 15, 1981.

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

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percent of those persons directly affected has been determined to be 145 persons based on the number of peace officers registered with the P.O.S.T. Advisory Council.

7. The authority to make the proposed amendment is based on Section 44-4-301 MCA. The implementing authority is contained in Section 7-32-303 MCA, and Section 7-32-4112 MCA.



(Administrator)

Certified to the Secretary of State on October 9, 1981

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule	)	AMENDMENT OF RULE
23.14.413	)	23.14.413
	)	(Certification Requirements
	)	for Trainee Attendance and
	)	Performance)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 16, 1981, the Board of Crime Control proposes to amend rule 23.14.413 which provides for the certification requirements for peace officer trainees attendance and performance at certified training courses.

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

23.14.413 CERTIFICATION REQUIREMENTS FOR TRAINEE ATTENDANCE AND PERFORMANCE

Sections (1) through (4) remain the same.

(5) The trainee enrolled in the basic course shall achieve a ~~firing~~ firearms qualification of not less than ~~70%~~ 80% out of a possible 100% to receive credit for certification. The trainees enrolled in all other courses which include ~~range~~ firearms ~~firing~~ qualification in the curriculum shall achieve a ~~firing~~ firearms qualification score of not less than ~~75%~~ 80% out of a possible 100% to receive credit for certification.

3. The amended rule sets forth the firearms qualification score for the basic course and for all other courses where firearms qualification is required for certification. During the past several years the Academy has been upgrading the firearms training. This has been to shorten the ranges from 50 yards to between 7 and 25 yards. These require the trainee to fire instinctively under conditions an officer may expect to encounter in the field. In reducing the range and using life-size silhouette targets, the Academy has had to up-grade the qualifying scores. This year the Academy adopted the firearms courses that are presently taught at the FBI National Academy. These all require a qualifying score of 80% out of a possible 100%. Many other states have adopted these courses and qualifying scores. The P.O.S.T. Advisory Council's objective is to maintain similar standards with the other states' programs when the courses are similar.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, 303 North Roberts, Helena, Montana 59620 no later than December 15, 1981.

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

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amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Bain no later than December 15, 1981.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 145 persons based on the number of peace officers registered with the P.O.S.T. Advisory Council.

7. The authority to make the proposed amendment is based on Section 44-4-301 MCA. The implementing authority is contained in Section 7-32-303 MCA, and Section 7-32-4112 MCA.


(Administrator)

Certified to the Secretary of State on October 9, 1981

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the Matter of the adoption)	NOTICE OF PROPOSED
of Rule I - Rule IV relating)	ADOPTION OF RULES
to the implementation of the)	
"Montana Beef Research and)	MONTANA BEEF RESEARCH
Marketing Act" and its)	AND MARKETING ACT;
authorized tax levy.)	ASSESSMENT AND LEVY OF
	AUTHORIZED TAX

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On or after December 1, 1981 the Board of Live-stock proposes to adopt rules implementing the "Montana Beef Research and Marketing Act" and establishing dates on which the tax authorized by the Act may be paid.

2. The rule (s) provide as follows:

RULE I AUTHORIZED TAX AND BEGINNING DATE.

The tax authorized by the "Montana Beef Research and Marketing Act", 81-8-801 et seq. M.C.A., shall be assessed beginning January 1, 1982. (History: Sec. 81-8-803 M.C.A.; IMP, Sec. 81-8-804 M.C.A., Eff. 12/1/81.)

RULE II ASSESSMENT METHOD.

It shall be assessed in the same manner and upon the same number of head of cattle as all other taxes on live-stock are assessed, as found in 15-24-901 et seq. M.C.A. (History: Sec. 81-8-803 M.C.A.; IMP, Sec. 81-8-804 M.C.A., Eff. 12/1/81.)

RULE III PAYMENT DATES

(1) It shall be payable to the County Treasurer on:


- (a) the date the taxpayer's other personal prop-erty tax is due, according to 15-16-113 M.C.A., if the taxpayer owns no real property otherwise taxable within the state during the tax year; or
- (b) the date the livestock tax found in 15-24-905, M.C.A., is due if he is taxed for migratory livestock brought into the state throughout the tax year; or
- (c) the date all personal taxes and the first one-half of the real property taxes are due, as found in 15-16-102, M.C.A.

(2) No matter which above date is chosen, the tax shall be paid to the County Treasurer before March 2 of the year following its assessment and levy. (History: Sec. 81-8-803 M.C.A.; IMP, Sec. 81-8-804 MCA, Eff. 12/1/81.)

RULE IV REFUND OF TAX.

- (1) A taxpayer paying the above tax may request a refund by submitting a refund application to the Department of Livestock within 30 days of payment of the tax.
- (2) Refund application forms may be obtained from the County Treasurer. (History: Sec. 81-8-803 M.C.A.; IMP, Sec. 81-8-804 M.C.A., Eff. 12/1/81.)
3. The rule is proposed to be adopted to clarify how assessments are to be made; when the tax must be paid; and how refunds are to be collected.
4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Les Graham, Administrator, Brands-Enforcement Division or James W. Glosser, D.V.M., Administrator & State Veterinarian, Department of Livestock, Capitol Station, Helena, MT 59620 no later than November 29, 1981.
5. If a person is directly affected by the proposed rules 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 Les Graham, Administrator, Brands-Enforcement Division or James W. Glosser, D.V.M., Administrator & State Veterinarian.
6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 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 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.
7. The authority of the agency to make the proposed rules is based on Section 81-8-803 M.C.A., and the rules implement Section 81-8-804 M.C.A..


ROBERT G. BARTHELMESS
Chairman, Board of Livestock

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

Certified to the Secretary of State October 19, 1981.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF LOCATION CHANGE FOR
ment of rules pertaining to	)	PUBLIC HEARING ON PROPOSED
fees for the Administrative	)	AMENDMENT OF RULES 1.2.421
Rules of Montana, Montana	)	SUBSCRIPTION TO THE CODE - COST;
Administrative Register	)	1.2.423 AGENCY FILING FEES
and Agency Filing Fees.)	

TO: All Interested Persons:

1. On Wednesday, November 4, 1981, at 10:00 a.m., a public hearing will be held in Room 309, Agriculture/Livestock Building, 301 Roberts, Helena, Montana, to consider the amendment of rules pertaining to fees for the Administrative Rules of Montana, updates to the Administrative Rules of Montana, Montana Administrative Register and agency filing fees. The proposed amendments were published in MAR Notice No. 44-2-24 of the 1981 Montana Administrative Register, Issue No. 19, dated October 15, 1981, at page 1179.

2. The location of the public hearing is changed from Room 108, Capitol Building, Helena, Montana, to Room 309, Agriculture/Livestock Building.


JIM WALTERMIRE
Secretary of State

Dated this 19th day of October, 1981.

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 November 18, 1981, at 9:00 o'clock a.m., a public hearing will be held in the office of the Commissioner of Political Practices, 1205 E. 8th Avenue, 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 other official action means attempting to influence pending or proposed legislation or other action by direct personal contact and persuasion, or direct communications from a lobbyist to a legislator or other public official.

(2) It is immaterial whether such contact or persuasion occurs during a legislative session or other official proceeding or not.

(3) Appearances before the legislature or other body in response to a subpoena or written request to appear from the presiding official of the body shall not be considered "lobbying." AUTH: New Section 17, IMP: Sec. 5-7-102(4)

RATIONALE: It is necessary to confine the definition of "lobbying" to 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 a governmental entity when it is engaged in a proceeding which is quasi-legislative in nature. Examples of such proceedings include but are not necessarily limited to the following:

(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 proceeding of a state or local governmental agency the purpose of which is to enact, amend, or repeal ordinances, adopt a land-use plan, zoning regulation, or other quasi-legislative function.

(2) The definition of "lobbying" is not confined to efforts conducted at a formal proceeding but includes informal efforts at persuasion. Persons who expend, or who can reasonably expect to expend, \$1000 or more in a calendar year on such efforts are required to register as lobbyists and/or principals. AUTH: New Section 17, IMP: Sec. 5-7-102(4)(b)

RATIONALE: This rule is needed to clarify what is covered by section 5-7-102(4)(b). The statute is not very clear on what is meant by "attempting to influence official action by a public official," nor was the matter much clarified by the opinion of the Supreme Court in State Bar of Montana v. Krivec, 38 State Reporter 1322 (1981). One line of thinking holds that the Court's opinion has essentially read subsection (4)(b) out of the statute, so that it has no operative effect at all. The agency feels that it is preferable to read the statute in a way that gives it meaning rather than no meaning. Since quasi-judicial and ministerial functions are clearly not covered, the remaining covered actions must be quasi-legislative. There may be other examples of such activities. 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. The proposed rule implements section 5-7-102(4)(b).

RULE III. 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 relating to information required to be reported by the Act and to transmit such information to his principal in a fashion that will allow timely reporting by the principal.

AUTH: New Section 17

IMP: New Section 11

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 IV. STATE GOVERNMENT AGENCIES--LOBBYING--DEFINITIONS AND REPORTING (1) For purposes of calculation of expenditures for lobbying efforts by state 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 state 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 course of proposed or pending legislation 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 employees of the department.

(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 agencies 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.

AUTH: New Section 17 IMP: New Sections 11 and 14

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 necessary implication it covers activities of public employees. However, since many of their activities are mandated by law, it seems logical to make certain exceptions. The Act itself does this in New Section 14. The proposed rule implements New Sections 11 and 14.

RULE V. STATE GOVERNMENT EMPLOYEES--WAIVER OF REGISTRATION FEE (1) State government employees whose lobbying activities are covered by the Act and these rules are required to register as lobbyists in the usual manner. The \$10 fee mentioned in section 5-7-103 will be waived for such employees.
AUTH: New Section 17 IMP: Sec. 5-7-103

RATIONALE: There is no express provision in the Act authorizing such a waiver, but in this case it makes sense. The fee would only be charged to the State and repaid to the State, with the interposition of a considerable amount of paperwork which costs money. The rule implements section 5-7-103.

RULE VI. 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 time is devoted to lobbying or lobbying-related 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 or other support activities, the cost of which is reportable under the Act, then the sum reportable may be computed as the proportion of the total compensation paid which equals the reasonable proportion of the total hours or days spent on reportable activities during the period. For example, if any employee or agent is paid \$500 per week and spends the equivalent of two days a week on lobbying or other reportable activities, then \$200 should be reported by his principal as lobbying payments.
AUTH: New Section 17 IMP: New Section 17

RATIONALE: A rule of this nature is specifically required by New Section 17 of the initiative. This would allow organizations who have activities other than lobbying to make a reasonable estimate of the staff time (or other resources) devoted to lobbying purposes. The alternative is to keep detailed records of how employee time is spent.

RULE VII. REPORTING OF CONTRIBUTIONS AND MEMBERSHIP FEES (1) As used in section 11(5)(c), a contribution or membership fee is considered to be paid for the purpose of lobbying and therefore reportable by a principal if it is:
(a) solicited by the recipient to be used primarily for payment of lobbying expenses;

(b) paid to a group formed primarily for the purpose of lobbying;

(c) earmarked by the donor to be used for payment of lobbying expenses.

AUTH: New Section 17 IMP: Section 11(5)(c)

RATIONALE: A rule in this area is required to clarify what is meant by the phrase "paid for the purpose of lobbying" in section 11(5)(c). The rule implements that section.

RULE VIII. 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.

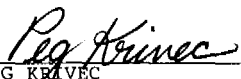
AUTH: New Section 17 TMP: Sec. 5-7-102(12), New Section 16

RATIONALE: Under New Section 16, certain elected officials must file biennial reports of personal financial interests. This rule is needed to clarify what must be reported under the section. 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 either. The proposed rule implements section 5-7-102 (12) and New Section 16.

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 November 30, 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.



PEG KRIVEC
Commissioner of Political
Practices

Certified to the Secretary of State October 19, 1981.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF EMERGENCY
of a temporary emergency rule) RULE TEMPORARILY IMPOSING CER-
temporarily imposing certain) TAIN GRAIN SAMPLING AND TESTING
fees on grain sampling and) FEES.
testing.)

TO: All Interested Persons:

(1) Statement of reason for declaring an emergency:

(a) The USDA has imposed a federal "user fee" that it extracts from the department in the amounts shown below for each specific service provided as listed below. This USDA federal user fee became effective October 1, 1981. Under the department's administrative rules as they existed on October 1, 1981, the appropriate grain sampling and testing fees charged by the department to persons requesting the services specified, did not provide a means whereby the department could pass on to a person requesting the various services the said user fee imposed by the USDA. This results in a monetary deficit to the department each time it provides a requested service.

Approximately six (6) weeks is required to process an administrative rule change in the normal or routine manner, which under these circumstances would result in a significant financial loss to the department.

Sections 80-4-112 and 80-4-119 MCA provide that the department can adopt rules and set fees for providing the requested services, and specify that the fees should be kept as near the actual cost of the service as possible.

The department hereby finds that an imminent emergency exists which threatens the public welfare, and which requires the adoption and implementation of this rule immediately, without prior notice.

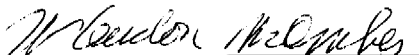
RULE I. FEDERAL USER FEES (1) The department hereby adopts the following schedule of additional charges for each specific service shown:

- | | |
|---|--------|
| (a) Official Lot Inspection (Truck) | \$1.00 |
| (b) Official Lot Inspection (Boxcar) | \$2.40 |
| (c) Official Lot Inspection (Hopper Car) | \$2.60 |
| (d) Protein Test | \$.25 |
| (e) Moisture Test (Oven Method) | \$.45 |
| (f) Protein Test--feed and barley (Dry Basis) | \$.25 |
| (g) Certification of a factor
(that does not affect grade) | \$.45 |
| (h) Submitted Sample Inspection | \$.75 |

(2) This emergency rule will expire on February 12, 1982.

(3) This rule is authorized by and promulgated under sections 80-4-112, 80-4-119 and 2-4-303 MCA (IMP 80-4-112, 80-4-119 and 2-4-303 MCA.)

Dated this 14th day of October, 1981.


W. Gordon McOmber, Director
Montana Department of Agriculture

Montana Administrative Register

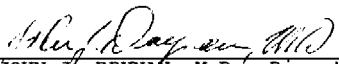
20-10/29/81

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

In the matter of the	)	NOTICE OF
amendment of rules 16.16.803	)	AMENDMENT OF RULES
and 16.16.804 regarding fee	)	ARM 16.16.803
schedules for review of	)	AND 16.16.804
subdivisions and disposition	)	(Subdivision Review Fees)
of fees)	

TO: All Interested Persons

1. On September 17, 1981, the department published notice of a proposed amendment of rule 16.16.803 regarding fee schedules for subdivision review and rule 16.16.804 concerning disposition of fees at pages 1019-1022 of the 1981 Montana Administrative Register, issue number 17.
2. The department has amended the rules as proposed.
3. No comments or testimony were received.



JOHN V. DRYNAN, M.D., Director

Certified to the Secretary of State October 19, 1981

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


In the matter of the	)	NOTICE OF
amendment of rule 16.28.202	)	AMENDMENT OF RULE
concerning reporting require-	)	ARM 16.28.202
ments for various categories)	
of diseases	)	(Reportable Diseases)

TO: All Interested Persons

1. On September 17, 1981, the department published notice of a proposed amendment of rule 16.28.202 regarding reporting requirements for various categories of diseases at pages 1016-1018 of the 1981 Montana Administrative Register, issue number 17.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 19, 1981

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the)	
Amendment of rule 24.19.501,	)	NOTICE OF AMENDMENT OF
providing for rebate of	)	ARM RULE 24.19.501 AND
service charges, interest,	)	REPEAL OF ARM RULE
and/or placement fees and the	)	24.19.503
repeal of rule 24.19.503,)	
providing for termination)	
after thirty days.)	

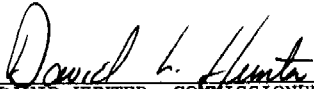
TO: All Interested Persons:

1. On August 27, 1981 the Commissioner, Department of Labor and Industry, State of Montana published a notice of the proposed amendment of ARM Rule 24.19.501 REBATE OF SERVICE CHARGES INTEREST AND/OR PLACEMENT FEES and of the proposed repeal of ARM Rule 24.19.503 TERMINATION AFTER THIRTY DAYS at page 919 and 920, Montana Administrative Register, issue Number 16.

2. ARM Rule 24.19.503 is repealed effective October 30, 1981.

3. ARM Rule 24.19.501 is amended exactly as proposed effective October 30, 1981.

4. No comments or testimony were received by the Department.


DAVID HUNTER, COMMISSIONER
DEPARTMENT OF LABOR AND
INDUSTRY, STATE OF MONTANA

Certified to the Secretary of State, October 14, 1981.

VOLUME NO. 39

OPINION NO. 34

COUNTY BUDGET AND TAXATION - Property tax levy to satisfy judgments;
COUNTY BUDGET AND TAXATION - Levy of property taxes for special purposes;
JUDGMENTS - County taxes to satisfy judgments;
MONTANA CODE ANNOTATED - Section 2-9-316, 7-6-2501, 7-6-2531, and 7-6-4452;
OPINIONS OF THE ATTORNEY GENERAL - 27 OP. ATT'Y GEN. NO. 37 (1957) and 38 OP. ATT'Y GEN. NO. 112 (1980).

- HELD:1. The mill levy limitation provided in section 7-6-2501, MCA, does not apply to special levies authorized for particular purposes.
2. The mill levy authorized by section 2-9-316(3), MCA, is a special levy not subject to the limit provided in section 7-6-2501, MCA.
3. The election requirement of section 7-6-2531, MCA, applies to general and special mill levies only when the levies exceed applicable statutory limits.

6 October 1981

J. Allen Bradshaw, Esq.
Granite County Attorney
P.O. Box 490
Philipsburg, Montana 59858

Dear Mr. Bradshaw:

You have requested my opinion on the following question:

May a county impose a property tax levy pursuant to section 2-9-316, MCA, without regard to the mill levy limitation and election procedures set forth in sections 7-6-2501 and 7-6-2531, MCA?

Section 2-9-316, MCA, sets forth the various methods through which a political subdivision may obtain the funds necessary to satisfy a judgment against the political subdivision. Section 2-9-316(3), MCA, allows a political subdivision to

levy a property tax of up to ten mills for this purpose. You inquire whether this tax is within the mill levy limitations for counties established in section 7-6-2501, MCA.

Section 7-6-2501, MCA, establishes a limitation on property taxes levied to finance the general governmental expenses of the county. It does not limit the county's power to levy additional taxes authorized by statute for special purposes. 27 OP. ATT'Y GEN. NO. 37 (1957). Section 2-9-316, MCA, would make little sense if the ten mill tax provided in subsection (3) was intended to be a general fund tax, since under subsection (2) the county is already authorized to expend general fund monies to satisfy judgments. If subsection (3) is to have meaning, it must be read to confer taxing authority beyond the limitation on general fund taxes established in section 7-6-2501, MCA.

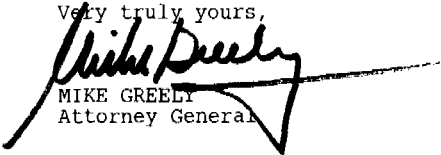
The county tax situation is to be distinguished from the situation of municipalities levying an all-purpose property tax. In 38 OP. ATT'Y GEN NO. 112 (1980), I discussed the relationship between the all-purpose mill levy and special mill levies which municipalities are authorized to impose. Cities have the option of imposing an all-purpose mill levy under section 7-6-4452, MCA, or imposing numerous special mill levies to fund governmental operations. As the language of that statute makes clear, when a city adopts an all-purpose levy it forfeits the power to impose additional special levies unless specifically authorized to do so by statute. No similar restriction appears in section 7-6-2501, MCA, on the powers of counties. The tax referred to in that section does not purport to be an "all purpose" tax levied "in lieu of" the special tax levies authorized elsewhere. Rather, it is simply a general tax levy for purposes of financing general fund expenditures for the general support of county government. Nothing in the statute expresses an intent to exclude additional tax levies authorized for special purposes.

You also inquire about the provisions of section 7-6-2531, MCA, which allows a county to exceed mill levy limits with voter approval. Since I have concluded that the tax authorized in section 2-9-316(3), MCA, is not subject to the limitation set forth in section 7-6-2501, MCA it follows that the tax may be levied up to the ten mill limit without submitting the question to the voters under section 7-6-2531, MCA. If it should become necessary to exceed the ten mill limit, however, the matter must be approved through election under that section.

THEREFORE, IT IS MY OPINION:

1. The mill levy limitation provided in section 7-6-2501, MCA, does not apply to special levies authorized for particular purposes.
2. The mill levy authorized by section 2-9-316(3), MCA, is a special levy not subject to the limit provided in section 7-6-2501, MCA.
3. The election requirement of section 7-6-2531, MCA, applies to general and special mill levies only when the levies exceed applicable statutory limits.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39

OPINION NO. 35

FIRE DEPARTMENTS - Schedule of workshifts;
FIREFIGHTERS - Hours of work;
FIREFIGHTERS - Receipt of compensatory time off;
HOURS OF WORK - Repeal by implication of statutes providing criminal penalties for overtime work;
HOURS OF WORK - Firefighters;
STATUTES - Repeal by implication;
MONTANA CODE ANNOTATED - Title 7, Chapter 1, Part 1, 7-5-4101, 7-33-4126, 7-33-4129, 7-33-4132, Title 39, Chapter 3, Part 4, 39-4-107;
UNITED STATES CODE - 29 USC §201 et seq.;
OPINIONS OF THE ATTORNEY GENERAL - 36 OP. ATT'Y GEN. NO. 63 (1970) and 38 OP. ATT'Y GEN. NO. 83 (1980).

- HELD:1. Work schedule for firefighters must conform to those set forth in 7-33-4126, MCA.
2. A firefighter may receive compensatory time off for bonus hours worked in excess of forty in one week.

7 October 1981

James W. Spangelo, Esq.
City Attorney
P.O. Box 231
Havre, Montana 59501

Dear Mr. Spangelo:

You have requested my opinion on the following questions:

1. May a municipal fire department, with the consent of its employees, schedule firefighters to work shifts of 24 hours on duty followed by 72 hours off duty when such a schedule results in firefighters working more than eight hours in one day and forty hours in one week?
2. May firefighters accept compensatory time off in lieu of additional monetary compensation for overtime work?

20-10/29/81

Montana Administrative Register

You raise two other questions which need not be answered in light of the disposition of these questions:

I.

38 OP. ATT'Y GEN. NO. 83 (1980) examined the status of Montana's statutes providing for eight-hour work days. The statute in question there was 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 our municipal or county government, [or] the state government....* * *

* * *

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

The opinion noted the enactment of maximum hour and overtime statutes and an opinion of the Montana Supreme Court authorizing payment of overtime salary to state employees working more than eight hours per day, Glick v. Department of Institutions, 162 Mont. 82, 509 P.2d (1973), and concluded that section 39-4-107, MCA, does not prevent a local law enforcement agency from scheduling its employees to work a forty-hour week consisting of four ten-hour days.

Section 39-4-107, MCA, was originally enacted in 1905 to promote the safety and well-being of workers through a system of criminal sanctions for overtime work. See Butte Miner's Union v. Anaconda Copper Mining Co., 112 Mont. 418, 436, 118 P.2d (1941). Until 1938, the legislature chose to regulate hours of work through imposition of such criminal sanctions, which, incidentally, applied to both employer and employee. State v. Livingston Concrete Building and Manufacturing Co., 34 Mont. 570, 577, 87 P.9, 80 (1906). In 1938, the federal Fair Labor Standards Act, 29 USC §201 et seq. ("FLSA"), changed the direction of the law by creating the now well-known system under which workers are not prohibited from working more than the statutory maximum hours, but rather are granted additional compensation at a higher rate for the additional work. The FLSA was enacted pursuant to Congress' power to regulate interstate commerce, and it therefore controls, under the United States Constitution's

Supremacy Clause, to the extent of any inconsistency with state laws on the subject. See Butte Miner's Union, 112 Mont. at 429-31. Since the FLSA provides for overtime compensation for extra hours worked, Montana's provisions for criminal penalties for such conduct may not be applied to employees and employers covered by the FLSA.

The public employees in question here are excluded from the coverage of the FLSA under the decision of the United States Supreme Court in National League of Cities v. Usery, 426 U.S. 833 (1976). It does not follow, however, that public employees and their supervisors are subject to criminal penalties for overtime work. The legislature has enacted several statutes dealing with wages and hours. Such statutes are in pari materia with the eight hour day statutes, and all must therefore be read together. State ex rel. McHale v. Ayers, 111 Mont. 1, 5, 105 P.2d 686 (1940). Title 39, Chapter 3, Part 4, MCA, is Montana's version of the FLSA. Like the 8-hour day provision of section 39-4-107, MCA, its purpose is to promote the general well-being of the worker. Chapter 417, Section 1, Laws of 1971. It provides that workers are entitled to additional compensation when employed in a work week of more than forty hours. Section 39-3-405, MCA. Since a statutory work week is forty hours, section 39-3-405, MCA, the overtime statute is obviously inconsistent with the criminal penalties provided in section 39-4-107, MCA. It is ridiculous to suggest that the legislature intended to prohibit a person, on pain of criminal penalty, from exceeding eight hours of work per day or forty hours of work per week, as section 39-4-107, MCA, provides, while at the same time providing that employee with a premium in the form of one and one-half times his usual rate of compensation for overtime hours. The provisions relate to the same subject matter and they support the same objective, but they simply cannot be reconciled. While repeals by implication are not favored, Fletcher v. Paige, 124 Mont. 114, 119, 220 P.2d 484 (1950), I cannot escape the conclusion that by its later enactment of the overtime provision in section 39-3-405, MCA, the legislature has implicitly repealed the earlier criminal penalties for overtime work in Title 39, Chapter 4. See State ex rel. Jenkins v. Carisch Theatres, Inc., 172 Mont. 453, 458-59, 564 P.2d 1316 (1977). I reaffirm my holding to that effect in 38 OP. ATT'Y GEN. NO. 83 (1980).

That opinion, however, does not control the answer to your question, since the legislature has enacted other more specific provisions relating to firefighters. Section 7-33-4126, MCA, provides:

Hours of work of member's of paid fire departments in cities of first or second class. (1) The city council, city commission, or other governing body in cities of the first or second class shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight hours out of each consecutive twenty-four hours except in the event of a conflagration or other similar emergency when any of such members shall be required to serve so long as the necessity therefor exists.

(2) Each member shall be entitled to at least one day off out of each eight day period of service without loss of compensation.

Section 7-33-4132, MCA, provides a misdemeanor criminal penalty for violation of this statute. Unlike section 39-4-107, MCA, section 7-33-4126, MCA, does more than limit hours of work --it establishes a statutorily mandated work schedule consisting of eight hours on duty followed by sixteen hours of off duty with at least one full day off duty in each eight day period. A statute is repealed by implication only to the extent of its inconsistency with subsequent legislation. Thus, although the criminal penalties for overtime work provided in section 7-33-4132, MCA, cannot stand, the provisions of section 7-33-4126, MCA, establishing a work schedule for firefighters remain in force.

Your letter suggests that since section 7-33-4126, MCA, was enacted to further the health and well-being of firefighters, the employees may waive the benefit of the statute and agree to a work schedule other than that established by the legislature. Initially, even if it is conceded that the statute was intended solely to benefit the firefighters, it does not follow that they may waive its protections. Livingston Concrete, 34 Mont. at 577. Further, although the purpose of the eight-hour day statute is "to avoid the continuous employment of workmen for such length of time as to imperil their lives or health," Livingston Concrete, 34 Mont. at 576, it is not at all clear that this was the sole motivation for the enactment of section 7-33-4126, MCA. It is conceivable, for example, that the legislature might have concluded that work shifts longer than eight hours in each twenty-four hour period might detract from the efficiency of

the firefighter's performance of his duty and thereby endanger the safety of persons or property in the community in the event of a fire. This possibility is enhanced by the fact that when section 7-33-4126, MCA, was enacted in 1937, firefighters had been protected from the "evils" of overtime work for some twenty years under an amendment to section 39-4-107, MCA, Section 1, Chapter 30, Laws of 1917. The work shift provisions of section 7-33-4126, MCA, do not add materially to the protections granted to firefighters under the eight-hour day statutes. I must therefore conclude that the legislature had some other object in mind in enacting the work-shift provisions of section 7-33-4126, MCA, and that the firefighters may not waive the provisions of the statute.

When the legislature prescribes the means by which a municipality with only general government powers is to do an act or perform a function, the municipality has no discretion to do otherwise. Dietrich v. City of Deer Lodge, 124, Mont. 8, 15, 218 P.2d 708 (1950). Section 7-33-4126, MCA, leaves no discretion to the city -- it must schedule its firefighters in shifts according to the statute.

In light of my conclusion that the work schedule provisions of section 7-33-4126, MCA, may not be waived by the employees, I need not reach the question of whether such a waiver may result from collective bargaining. Since I have concluded that the criminal penalties for overtime work have been repealed by implication, I likewise need not decide whether employee consent is a defense to prosecution under sections 7-33-4132 and 39-4-107, MCA.

II.

Your second question is whether firefighters may receive compensatory time off in exchange for hours worked in excess of forty in a workweek. I conclude that such a practice is permissible. Section 39-4-107(2), MCA, provides that a standard workweek for firefighters is forty hours. However, the statutes clearly authorize the performance of overtime work in cases "of a conflagration or other similar emergency," and the statutory work schedule would also allow an employee to work more than five eight-hour shifts per week. Section 7-33-4126(1), and 39-4-107(1), MCA. Under section 7-33-4129, MCA, firefighters are entitled to additional overtime compensation under Title 39, Chapter 3, Part 4, only if such entitlement is agreed upon through collective bargaining. The conclusion expressed in Part I

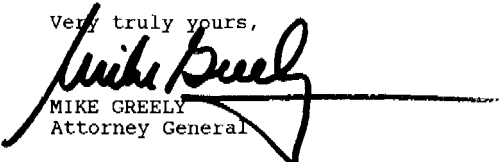
of this opinion and in 38 OP. ATT'Y GEN. NO. 83 (1980) is based largely on the legislature's determination that employees who work more than the statutory maximum work week are entitled to compensation. If that compensation does not take the form of additional salary at one and one-half times the normal rate, it must come in the form of compensatory time off which gives the employee an average work week of forty hours. While there is no explicit statutory authorization for the granting of compensatory time off to public employees, 36 OP. ATT'Y GEN. NO. 63 (1976) recognized that the power of county commissioners to manage the affairs of a county includes the power to grant compensatory time off to employees. Section 7-5-4101, MCA, gives the governing body of a city the power to manage the affairs of the city and take any action necessary to execute the municipal powers. The necessarily implied power recognized in 36 OP. ATT'Y GEN. NO. 63 (1976) allows the city to enter into a contract providing compensatory time off for firefighters.

In closing, it is important to bear in mind that the above discussion applies to cities with general government powers, as opposed to those cities which have adopted self-government charters. Such home rule local governments possess expanded powers to manage their own affairs without regard to most statutory limitations on general government powers. See Title 7, Chapter 1, Part 1, MCA. This opinion expresses no conclusions as to the relationship between a self-governing city and its firefighters.

THEREFORE, IT IS MY OPINION:

1. Work schedules for firefighters must conform to those set forth in 7-33-4126, MCA.
2. A firefighter may receive compensatory time off for bonus hours worked in excess of forty in one week.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39

OPINION NO. 36

CITIES & TOWNS - Volunteer firefighters, eligibility for workers' compensation;
FIREFIGHTERS, VOLUNTEER - Eligibility for workers' compensation in incorporated towns;
WORKERS' COMPENSATION ACT - Volunteer firefighters as employees;
WORKERS' COMPENSATION ACT - Coverage for volunteer firefighters in incorporated towns;
MONTANA CODE ANNOTATED - Sections 7-33-4101 et seq., 39-71-101 et seq.

HELD: Volunteer firefighters in incorporated towns are "employees" within the terms of the Workers' Compensation Act.

9 October 1981

Jan VanRiper
Staff Attorney
Division of Workers' Compensation
815 Front Street
Helena, Montana 59601

Dear Ms. VanRiper:

The Workers' Compensation Division has requested an opinion as to whether volunteer firefighters in incorporated towns are employees under the provisions of the Workers' Compensation Act. The Workers' Compensation Act, section 39-71-101, et seq., MCA, does not specifically refer to volunteer firefighters. The Act does require workers' compensation coverage for all persons who qualify as an "employee" under section 39-71-118, MCA. If those volunteers are considered to be "employees," incorporated towns must comply with the coverage requirements of the Act. It is my opinion that volunteers should be considered "employees" within the terms of the act.

Section 39-71-118(1)(a), MCA, defines "employee" as "each person in this state ... who is in the service of an employer ... under any appointment or contract of hire, expressed or implied, oral or written." The issue presented

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by your request is whether volunteer firefighters serve incorporated municipalities "under any appointment or contract of hire."

Unpaid firefighters do not serve under any "contract of hire," because the element of compensation is lacking. See IC A. Larson, The Law of Workmen's Compensation § 47.41(a) (1980). However, other jurisdictions with statutory language similar to that above have determined that government volunteers may be employees "under ... appointment." See Betts v. Ann Arbor Public Schools, 403 Mich. 507, 271 N.W.2d 498 (1978) (student teacher); Orphant v. St. Louis State Hospital, 441 S.W.2d 355 (Mo. 1969) (volunteer at state hospital); but see Board of Education v. Industrial Commission, 53 Ill.2d 167, 290 N.E.2d 247 (volunteer in public school).

Under Montana's statutes concerning the fire departments of incorporated municipalities, volunteer firefighters clearly serve "under ... appointment." Section 7-33-4101, MCA, requires there to be in every city and town of this state a fire department, organized, managed, and controlled according to the provisions of state law. While first-class cities must have paid fire departments, second-class cities may have supplementary volunteer fire departments and third-class cities and towns may have all-volunteer fire departments. Sections 7-33-4109 and 7-33-4128, MCA. Regardless of whether a department is paid or volunteer, however, the procedure for selection of firefighters is the same. Sections 7-33-4106 and 7-33-4122, MCA state:

The mayor or manager shall nominate, and, with the consent of the council or commission, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firefighters.

Each appointment shall be first made for a probationary term of 6 months, and thereafter the mayor or manager may nominate and, with the consent of the council or commission, appoint such chief and assistant chief or chiefs of the fire department and firefighters, who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.

(Emphasis added.)

Furthermore, the municipality maintains the "right of control" over volunteer firefighters that is essential to any employer-employee relationship under the Workers' Compensation Act. See Sharp v. Hoerner Waldorf Corp., 178 Mont. 419, 425-26, 584 P.2d 1298, 1301-02 (1978); State ex rel. Ferguson v. District Court, 164 Mont. 84, 88, 519 P.2d 151, 153 (1974). All firefighters serve under the supervision of the chief or the chief engineer of the fire department, who in turn is directly responsible to the city or town council. See §§ 7-33-4104, 4105, 4109(5), 4123-25, MCA.

The Montana Workers' Compensation Act is required to be liberally construed in favor of the claimant. § 39-71-104, MCA. While the liberal construction doctrine has never been applied to the question of the underlying employment relationship, it is likely that the Montana Court would agree with language in a Georgia court opinion:

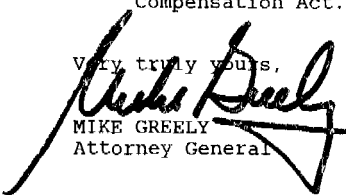
[A]ny legitimate doubt as to whether the status of the claimant is that of employee ... is to be resolved in favor of the employee status.

Ratliff v. Liberty Mutual Insurance Co., 149 Ga.App. 211, 253 S.E.2d 799, 801 (1979). See, Garland v. Anaconda Co., 177 Mont. 240, 244, 581 P.2d 431, 433 (1978).

THEREFORE, IT IS MY OPINION:

Volunteer firefighters in incorporated towns are "employees" within the terms of the Workers' Compensation Act.

Very truly yours,



MIKE GREELY
Attorney General