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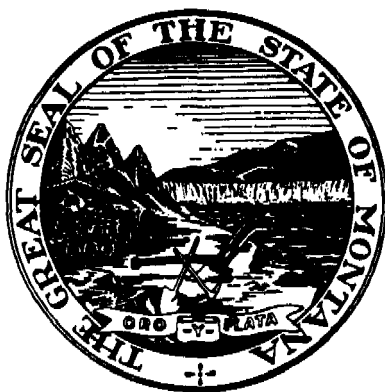
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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

In the matter of the proposed) NOTICE OF PUBLIC HEARING FOR
amendments of ARM 8.42.402 con-) AMENDMENT OF ARM 8.42.402
cerning examination, 8.42.403) EXAMINATIONS, 8.42.403 FEES,
concerning fees, 8.42.405 con-) 8.42.405 TEMPORARY LICENSES
cerning temporary licenses, and) AND PROPOSED ADOPTION OF NEW
proposed adoption of alterna-) RULES FOR ALTERNATIVE DISCI-
tive disciplinary action rules.) PLINARY ACTION

TO: All Interested Persons:

The notice of proposed amendment and adoption of the above-stated rules by the Board of Physical Therapy Examiners published at pages 1995 - 1999, 1982 Montana Administrative Register, on November 10, 1982 is amended as follows because the Montana Chapter of the APTA, as well as other interested persons, requested a public hearing.

1. On January 28, 1983, at 10:00 a.m., a public hearing will be held in the large conference room, Department of Commerce, 1430 9th Avenue, Helena, Montana to consider the proposed amendments and adoption of the above stated rules.

2. The rules are the same as those proposed in the original notice.


3. The rules are proposed for amendment and adoption for those reasons stated in the original notice.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Physical Therapy Examiners, no later than January 27, 1983.

5. Geoffrey L. Brazier, Helena, Montana has been designated to preside over and conduct the hearing.

6. The authority of the board to make the proposed amendments and adoption is based on sections 37-11-201, 37-1-134, and 37-1-136, MCA and implements sections 37-1-136, 37-11-201, 303, 304, 307, 308, 309, 321, MCA.

BOARD OF PHYSICAL THERAPY
EXAMINERS
JEROME B. CONNOLLY, R.P.T.
CHAIRMAN

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 20, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the amendment) NOTICE OF CANCELLATION OF
of rule 8.79.101 (5), (7), (8),) HEARING ON THE PROPOSED AMEND-
(11) (e), (f), and (13) as it) MENT OF 8.79.101 (5), (7), (8),
relates to invoice billing of) (11) (e), (f) and (13) PURCHASE
raw milk samples and reporting) AND RESALE OF MILK
of those results.)

Docket #61-83

TO: All Interested Persons:

1. The notice of hearing on the above stated rule which was published on December 16, 1982 at pages 2120 through 2122, 1982 Montana Administrative Register, issue number 23, is hereby amended cancelling the hearing scheduled for January 12, 1983 at 9:00 a.m. in the conference room of the Department of Commerce, 1430 9th Avenue, Helena, Montana.

2. The hearing has been cancelled to allow all affected parties an opportunity to evaluate a testing program alternative which could significantly reduce the burden which is currently placed on processors. The evaluation could result in a compromise or lead to a change in the proposed amendment as noticed on December 16, 1982. Any action will be published in the Administrative Register at a later date.

3. Interested persons may contact the Milk Control Bureau, 1424 9th Avenue, Helena, Montana 59620-0422 for additional information.

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

BY: William E. Ross
WILLIAM E. ROSS, CHIEF
MILK CONTROL BUREAU

Certified to the Secretary of State, December 20, 1982.

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

IN THE MATTER of Adoption by)	NOTICE OF PROPOSED ADOPTION
reference of Title 18, Part)	BY REFERENCE OF TITLE 18,
290, C.F.R. regarding infor-)	PART 290, C.F.R.
mation collection for cost of)	NO PUBLIC HEARING
service for certain electric)	CONTEMPLATED
utilities.)	

TO: All Interested Persons

1. On January 31, 1983, the Department of Public Service Regulation proposes to adopt by reference Title 18, Part 290, C.F.R., which sets forth requirements for collection of information regarding cost of service for electric utilities whose total sales exceed 500 million kilowatt-hours per year.

2. The proposed rule sets forth requirements for collection of information regarding cost of service for electric utilities whose total sales exceed 500 million kilowatt-hours per year. A copy of Title 18, Part 290, C.F.R. may be obtained from the Department of Public Service Regulation, 1227 11th Avenue, Helena, Montana 59620.

RULE 1. COST OF SERVICE INFORMATION (1) The Department of Public Service Regulation hereby adopts and incorporates by reference Title 18, Part 290, C.F.R., which sets forth requirements for collection of information regarding cost of service for electric utilities whose total sales exceed 500 million kilowatt-hours per year. A copy of Title 18, Part 290, C.F.R. may be obtained from the Department of Public Service Regulation, 1227 11th Avenue, Helena, Montana 59620.

3. The Commission proposes to adopt these federal rules to assure that it will have available to it, the information required by the rules.

4. Interested parties may submit their data, views or arguments concerning the proposed rule at the hearing, or in writing to Eileen E. Shore, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than January 31, 1983.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Eileen E. Shore, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than January 31, 1983.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental sub-division 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 one person based on the fact there are five utilities which would be affected in the State of Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

8. The authority for the Commission to make the proposed rules is based on Section 69-3-103, MCA, and the rule implements Section 69-2-101, MCA.



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 20, 1982.

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

In the matter of the)
amendment of Rules 46.16.102) NOTICE OF PUBLIC HEARING ON
and 46.16.106 pertaining to) THE PROPOSED AMENDMENT OF
the end stage renal program.) RULES 46.16.102 AND
) 46.16.106 PERTAINING TO THE
) END STAGE RENAL PROGRAM

TO: All Interested Persons

1. On January 20, 1983, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rules 46.16.102 and 46.16.106 pertaining to the End Stage Renal Program.

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

46.16.102 DEFINITIONS

Subsection (1) remains the same.

(2) Family unit means the following individuals who are living together:

(a) the claimant,

(b) the claimant's spouse,

(c) the claimant's natural or adoptive children under 18 years of age, and

(d) the claimant's natural or adoptive parents, when the claimant is under 18 years of age.

(3) Responsible relative means the claimant's spouse, and the claimant's natural or adoptive parents,--and--the claimant's natural or adoptive children, when the claimant is under 18 years of age.

Subsections (4) through (7)(j) remain the same.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-6-201 and 53-6-202, MCA.

46.16.106 FINANCIAL ELIGIBILITY REQUIREMENTS (1) In

order to participate in the Montana end stage renal program, the claimant must meet the following requirements:

(a) He must ~~not~~ be unable to pay the total cost of such needed care and treatment without depriving himself or those legally dependent upon him for their necessities of life. When the claimant is ~~either a minor child or an adult dependent on others for his support, the responsible relatives living with him~~ his natural or adoptive parents must be unable to provide for his care without depriving themselves of the necessities of life.

~~(b) He shall not have relatives who are living apart from him and who are legally responsible to provide such care and treatment, but who refuse or neglect to provide such care~~

~~and treatment in whole or in part without having demonstrated and documented their inability to support their dependent.~~

(e) (b) He shall not have deprived himself directly or indirectly, of any property for the purpose of qualifying for assistance. The rule governing such fraudulent transfers of property is found in ARM 46.12.3207.

(d) (c) He must take all steps necessary to apply for and, if entitled, pursue and accept any financial or medical resources for which he may qualify. Medical resources include public or private agencies which are or may be liable to pay all or a part of the medical costs of a claimant. Such resources include but are not limited to: medicare (Title XVIII); medicaid (Title XIX); insurance policies (including private health, group health or family health insurance carried by an absent parent if applicable); the veteran's administration; CHAMPUS (civilian health and medical program of the uniformed services); and vocational rehabilitation.


Subsection (2) through (3)(h) remain the same.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-6-201 and 53-6-202, MCA.

3. The department proposes these changes to make it easier for the families of an adult ESRD claimant to live as a family unit. The department has an ongoing plan to add uniformity to its programs where possible; these changes bring the ESRD program eligibility criteria more in line with Medicaid and AFDC rules.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59604, no later than January 28, 1983.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 20, 1982.

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

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule ARM 2.32.101 concern-) OF ARM 2.32.101
ing the adoption by reference)
of the Uniform Building Code)

TO: All Interested Persons:

1. On October 28, 1982, the Department of Administration published a notice of proposed amendment to the above rule concerning the adoption by reference of the Uniform Building Code at pages 1862-1865 of the 1982 Montana Administrative Register, issue number 20.

2. The agency has amended the rule as proposed.

3. No adverse comments or testimony were received.

However, comments were received from the City Engineer and City Building Inspector of Great Falls, suggesting changes to the proposed amendment of the rule.

Suggested change 1 was to Section 1205(a) of the Uniform Building Code, 1982 Edition. The suggestion concerned the fact that in light of energy conservation, the minimum window size given in the code should be reduced. No exact figures were given. This concern has also been expressed at the national level, but to date, all investigations conducted by the International Conference of Building Officials, who draft the Uniform Building Code, reveal that the codes current minimum levels are necessary to maintain a healthy environment within buildings. The suggested change was not made since it was felt that such serious consideration should be handled at the national level where more expertise is available.

Suggested change 2 was to Sections 3301(e), 3303(d), 3304(e) and (h), 3305(f), and 3315(h) of the Uniform Building Code, 1982 Edition. The suggestion concerned updating the handicapped requirements contained in the code. At the national level all model code groups and the Federal Government are currently reviewing handicapped requirements in an effort to develop a uniform standard nationwide. There has been numerous localized handicapped standards developed and the states have been asked to support the standardization effort by not continuing to develop localized standards. It was felt that the effort at the national level should be supported and therefore, the change was not made.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule ARM 2.32.102 concerning) OF ARM 2.32.102
the adoption of the Uniform)
Housing Code by reference)

TO: All Interested Persons:

1. On October 23, 1982, the Department of Administration published a notice of the proposed amendment to the above rule concerning the adoption by reference of the Uniform Housing Code at pages 1866-1867 of the 1982 Montana Administrative Register, issue number 20.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule ARM 2.32.103 concerning) OF ARM 2.32.103
the adoption of the Uniform)
Code For the Abatement Of)
Dangerous Buildings by reference)

TO: All Interested Persons:

1. On October 28, 1982, the Department of Administration published a notice of the proposed amendment to the above rule concerning the adoption by reference of the Uniform Code For The Abatement Of Dangerous Buildings at pages 1868-1869 of the 1982 Montana Administrative Register, issue number 20.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule ARM 2.32.105 concerning) OF ARM 2.32.105
the adoption of the Uniform)
Mechanical Code by reference)

TO: All Interested Persons:

1. On October 28, 1982, the Department of Administration published a notice of the proposed amendment to the above rule concerning the adoption by reference of the Uniform Mechanical Code at pages 1870-1874 of the 1982 Montana Administrative Register, issue number 20.
2. The agency has amended the rule as proposed.
3. No comment or testimony were received.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule ARM 2.32.302 concerning) OF ARM 2.32.302
the adoption of the Uniform)
Plumbing Code by reference)

TO: All Interested Persons:

1. On October 28, 1982, the Department of Administration published a notice of the proposed amendment to the above rule concerning the adoption by reference of the Uniform Plumbing Code at pages 1875-1880 of the 1982 Montana Administrative Register, issue number 20.

2. The agency has amended the rule as proposed.

3. Adverse comments and testimony were received. The adverse comments and testimony were received from the City Engineer and City Building Inspector of Great Falls.

Comment 1 concerning Section 1004 of the 1982 Edition of the Uniform Plumbing Code, specifically the use of plastic pipe for water distribution systems. The objection to adopting the code as written, that being the acceptance of use of plastic pipe for water distribution systems, was based on a letter from IAPMO stating that on April 1, 1982, the Supreme Court of California issued a temporary stay, banning the distribution of the Uniform Plumbing Code within the State of California unless listings of the varieties of plastic pipe known as P.B., P.V.C., and C.P.V.C. are omitted or such listings are accompanied by a warning substantially in the form suggested by the California Department of Consumer Affairs with respect to the possible toxicity of such varieties of plastic pipe. The City of Great Falls felt that until a decision has been made or until the results of the proposed environmental impact are known, the use of plastic pipe for water distribution must be held in abeyance. No scientific based data was submitted at the hearing to back the claims for possible toxicity of plastic water pipe. However, there was a preponderance of testimony, both verbal and written, presented at the hearing disclaiming toxicity connected with the use of plastic water pipe. In addition, the Montana Building Codes Advisory Council at their August 7, 1982 meeting approved the use of polybutylene water pipe. Based on the above, the City of Great Falls' proposed change was not included in the adoption.

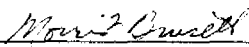
Comment 2 concerned the proposed amendment of Section 1008 of the 1982 Edition of the Uniform Plumbing Code. The City of Great Falls felt that without proper support from bacteriological tests, the proposed added sterilization procedure might not be effective. No suggested standards were submitted

by the City. The City felt if standards are not provided, the requirement should be deleted. The Division feels that the current wording provides the administrative authority having jurisdiction with enough flexibility to provide whatever bacteriological tests it feels necessary. Based on the above, the City of Great Falls' proposed change was not included in the adoption.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rules ARM 2.32.601 and) OF ARM 2.32.601 and
2.32.604 concerning the enforce-) 2.32.604
ment of the elevator code)

TO: All Interested Persons:

1. On October 28, 1982, The Department of Administration published a notice of the proposed amendment to the above rules concerning the enforcement of the elevator code at pages 1881-1884 of the 1982 Montana Administrative Register, issue number 20.
2. The agency has amended the rule as proposed.
3. No comment or testimony were received.



Morris Brusett, Director
Department of Administration

Certified to the Secretary of State Dec. 10, 1982

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the adoption) NOTICE OF ADOPTION OF A NEW
of a new rule concerning unpro-) RULE 8.16.722 UNPROFESSIONAL
fessional conduct.) CONDUCT

TO: All Interested Persons:

1. On November 10, 1982, the Board of Dentistry published a notice of hearing on the proposed adoption of a rule of unprofessional conduct at page 1986, 1982 Montana Administrative Register, issue number 21.

The hearing was held before the Board of Dentistry at 10:00 a.m. in the auditorium of the new Highway Department building, 2701 Prospect, Helena, Montana. Only one person aside from the court reporter, the board's administrative assistant and the hearing officer was present, Mary Lou Abbott, of the Montana Dental Hygienists Association, who declined to testify. A letter was submitted by Dean D. Koffler, D.D.S. of Lewistown in which he expressed concern regarding subsection (k) of the proposed rule which has been changed. Greg Petesch of the Legal Services Division of the Legislative Council expressed concern by telephone with regard to subsections (d) and (f) which are being changed due to his comments.

2. Based on the comments expressed the board is adopting the rule with the following changes: (new matter underlined, deleted matter interlined)

"8.16.722 UNPROFESSIONAL CONDUCT (1) ...

(c) Having been convicted of an offense involving moral turpitude and not having been sufficiently rehabilitated as to warrant the public trust.

(d) Administering, dispensing, or prescribing a narcotic-or-hallucinatory-drug-as-defined-by-the-Federal-Food-and-Drug-Administration-or-its-successor, controlled substance scheduled in Title 50, Chapter 32, MCA, otherwise then in the course of legitimate or reputable professional practice.

(e)...

(f) Having been convicted of violating a federal or state statute or rule regulating the possession, distribution, or use of a narcotic-or-hallucinatory-drug, as defined-by-the-Federal-Food-and-Drug-Administration controlled substance scheduled in Title 50, Chapter 32, MCA.

(h) ...

(k) Engaging in morally deprived depraved conduct with patients on the licensee's office premises or under practice related circumstances.

(m)...

3. No other comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the adoption) NOTICE OF ADOPTION OF NEW
of new rules for alternative) RULES FOR ALTERNATIVE DISCI-
disciplinary actions.) PLINARY ACTIONS 8.16.801 -
8.16.808

To: All Interested Persons:

1. On November 10, 1982, the Board of Dentistry published a notice of proposed new rules for alternative disciplinary actions at pages 1987 through 1989, 1982 Montana Administrative Register, issue number 21.

2. The board has adopted the rules exactly as proposed.

3. One comment was received from Dr. Thad Langford. His specific concern was under section II of the proposed rules which stated in part "or when competency has not been maintained." He was concerned as to whether the board planned to establish a mechanism for determining competency of the individual dentist by means of mandatory continuing education. The board responded that at this point in time, it does not plan to pass any mandatory continuing education requirements. By adopting the rule as proposed, the board will study continued competency, but it is not the determination of the board that continuing education is the mechanism by which to best do this. The rule will enable the board to develop a mechanism for determining when competency has not been maintained, if needed. No other comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HEARING AID DISPENSERS

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM
of ARM 8.20.401 concerning) 8.20.401 TRAINEESHIP REQUIRE-
traineeship requirements and) MENTS AND STANDARDS and 8.20.
8.20.402 subsection (2) concern-) 402 FEES
ing fees.)

TO: All Interested Persons:

1. On November 10, 1982, the Board of Hearing Aid Dispensers published a notice of proposed amendment of the above-stated rules at pages 1990-1991, 1982 Montana Administrative Register, issue number 21.

2. The board has amended the rules exactly as proposed.

3. No comments or testimony were received.

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 20, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENTS OF
of Rules 10.55.202, 10.55.205,) RULES 10.55.202, 10.55.205,
10.55.207, 10.55.302, and) 10.55.207, 10.55.302, and
10.55.503 relating to the) 10.55.503 relating to the
accreditation standards) accreditation standards

TO: All Interested Persons

1. On November 10, 1982, the Board of Public Education published notice of proposed amendments of rules 10.55.202, 10.55.205, 10.55.207, 10.55.302, and 10.55.503 relating to the accreditation standards and specify special education standards, at page 2000 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rules as proposed.
3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of Rule 10.60.101 Board of) 10.60.101 BOARD OF PUBLIC
Public Education Policy) EDUCATION POLICY STATEMENT
Statement)

TO: All Interested Persons

1. On November 10, 1982, the Board of Public Education published notice of a proposed amendment of rule 10.60.101 Board of Public Education Policy Statement relating to special education, at page 2004 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

Allen D. Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By *Uddhavan D. J...*

Certified to the Secretary of State December 10, 1982.

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

IN THE MATTER of Amendment of) NOTICE OF AMENDMENT OF RULE
of Rule 38.5.1405 Regarding) 38.5.1405
Termination of Gas and)
Electric Service.)

TO: All Interested Persons

1. On November 10, 1982, the Department of Public Service Regulation published a notice of proposed amendment of Rule 38.5.1405, regarding termination of gas and electric service at pages 2006-2007 of the 1982 Montana Administrative Register, issue number 21.

2. The Department of Public Service Regulation has amended the rule as proposed.

3. No comments or testimony were received.


GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 20, 1982.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE)
Amendment of Rules 42.32.101) NOTICE OF ADOPTION OF
and 42.32.103 and the Repeal) Amendment of Rules 42.32.101
of Rule 42.32.102 relating) 42.32.102 and 42.32.103
to the Resource Indemnity) relating to the Resource
Trust Tax.) Indemnity Trust Tax

TO: All Interested Persons:

1. On October 28, 1982, the Department of Revenue published notice of the proposed amendment of rules 42.32.101 and 42.32.103 and the repeal of rule 42.32.102, relating to the Resource Indemnity Trust Tax at page 1905 of the 1982 Montana Administrative Register, issue number 20.

2. The Department has amended rules 42.32.101 and 42.32.103 as proposed. The Department has decided not to repeal rule 42.32.102 as proposed, but rather to amend it as follows:

42.32.102 APPLICABILITY Minerals which have been extracted or otherwise produced during the year are subject to the resource indemnity trust tax if they are started in a refinement process, treated in any manner, or sold.

{2} (1) Minerals which are stockpiled or otherwise placed in storage in the same form as when extracted or produced are not subject to the tax until refined, treated, or sold.

3. On November 18, 1982, a public hearing was held regarding the proposed changes to these rules. This statement is in response to the Hearing Examiner's Report and other written comments submitted in the matter of the amendment of rules 42.32.101 and 42.32.103 and the repeal of rule 42.32.102, relating to the Resource Indemnity Trust Tax. The format of this statement will be to respond to the items of concern as pointed out in the Hearing Examiner's Report and then to any other concerns raised by individuals who presented written or oral comments not addressed by the Hearing Examiner.

The first point raised was that the Department would leave those subject to the tax without a formula to use in computing the tax. It is the Department's opinion that the statute provides the necessary formula to determine a filer's obligation under the statute. Section 15-38-105, MCA, Report of Gross Yield from Mines, provides for the quantity (lbs., tons, MCF's), the monetary amount of the mineral produced (\$), and therefore the gross yield in dollars and cents.

Quantity x \$ = gross yield in dollars.

Section 15-38-105, MCA, states:

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24-12/30/82

* * *

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement; (4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement; (5) the gross yield or value in dollars and cents.

The gross yield is then multiplied by the tax rate ($\frac{1}{2}$ of 1%) to determine the amount of tax due.

The next point raised was that the Department would levy the tax against waste ore or unrecoverable minerals. Again, the statute provides the necessary guidance with regard to this particular issue. That is, §15-38-103, MCA, Definitions, states:

* * *

(2) 'Gross value of product' means the market value of any merchantable mineral extracted or produced during the taxable year. (Emphasis added.)

If a product cannot technologically be separated from the impurities that surround it, it would seem reasonable that it would not be valuable to anyone and therefore would be nontaxable. Also, in §15-38-105(4), MCA, the amount and character of the mineral to be reported is to be in constituents of commercial value. If an ore cannot be separated to render commercially valuable products, it cannot be taxed. The statute is clear on this point.

The next major point in the Hearing Examiner's Report was that the Department was transforming the RIT tax into a severance tax. It is the Department's statutory obligation to administer the revenue statutes of Montana as passed by the Legislature. If the Department's proper administration of Title 15, Chapter 38 makes it a severance tax, then it was a severance tax when it was enacted by the 1973 Legislature. Also, if it is a severance tax, this fact would not render the tax invalid.

The final major issue raised was the problem in the case of stockpiled ores or products. The Department has carefully reexamined this issue and it appears that §15-38-105(3), MCA, allows stockpiling without triggering payment of the tax. For this reason, the Department has decided to retain the original subsection (2) of rule 42.32.102. Subsection (1) is deleted as proposed.

Gary Langley of the Montana Mining Association submitted comments that the Department left the filers of RIT returns with no formula to follow. This issue has been previously discussed and requires no further comment at this point.

George Bennett, representing ASARCO, also provided written and oral comments with regard to this matter. Essentially these comments can be summarized as follows: Any ore or mineral extracted from the ground must typically be processed prior to its being salable. Therefore, any purchaser of an ore or mineral, in arriving at a market value for the products must recognize that processing will impose costs that must be paid from the value of mineral. The Department concedes that any prudent businessman must consider these things; however, the RIT statutes do not provide for these costs in the determination of the tax. Prior to initiating this rules proceeding, the Department researched the legislative history of the act fully. It was found that during the 1973 legislative session which enacted the RIT tax, there were attempts to include the deductions addressed in Mr. Bennett's comments (Section 7). However, prior to passage, these reductions of gross value were removed from the bill.

Mr. Earl Lovick, representing W. R. Grace Company submitted both oral testimony and written comments in opposition to the rule. Mr. Lovick was concerned that the proposed rule would leave the company without a formula to determine gross value and that the proposed changes do not provide any way to account for mine or mill recovery losses. The Department has already addressed these concerns and sees no need for further comment.

Mr. Bill Phillips, representing the Anaconda Company, presented the same concerns as ASARCO and W. R. Grace Company.

Mr. Ira Smith, representing Shell Oil Company, presented the same general concerns as ASARCO, W. R. Grace Company and the Anaconda Company. Mr. Smith proposed amending subsection (2) of rule 42.32.103 to allow deductions for the costs of putting "wet" gas into a merchantable form. The Department refers back to its response to Mr. Bennett to address these concerns.

Written comments, substantially the same as those presented by ASARCO, W. R. Grace Company, etc., were received from Mr. Ward Shanahan, representing Stillwater PGM; Mr. C. G. Hull, representing the Anaconda Company, and Mr. T. J. Smolick, representing Golden Sunlight Mines, Inc. To address these concerns, the Department incorporates the responses previously given in this statement.

4. The authority for the rules is 15-1-201 and 72-16-337, MCA, and the rules implement 72-16-331 and 72-16-342, MCA.

Ellen Feaver
ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 12/20/82

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

In the matter of the amend-)
ment of Rule 46.14.401)
pertaining to the weather-)
ization assistance program,)
prioritization for service)

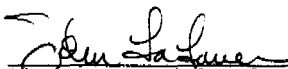
) NOTICE OF THE AMENDMENT OF
) RULE 46.14.401 PERTAINING
) TO THE WEATHERIZATION
) ASSISTANCE PROGRAM

TO: All Interested Persons

1. On November 10, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.14.401 pertaining to the weatherization assistance program, prioritization for service on page 2008 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 20, 1982.

VOLUME NO. 39

OPINION NO. 77

COUNTY COMMISSIONERS - Proceedings, duty to publish;
OPINIONS OF THE ATTORNEY GENERAL - 13 Op. Att'y Gen. at
42 (1929); 18 Op. Att'y Gen. at 28 (1939); 22 Op. Att'y
Gen. at 210 (1948);
MONTANA CODE ANNOTATED - Section 7-5-2123.

HELD: Section 7-5-2123, MCA, requires a board of
county commissioners, at the adjournment of
each session of the Board, to publish in a
newspaper a complete list of all claims
ordered paid and a fair summary of its
proceedings.

17 December 1982

Mr. Charles A. Graveley
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59623

Dear Mr. Graveley:

You have requested my opinion concerning whether the
Board of County Commissioners of Lewis and Clark County
has a duty to publish in a newspaper a list of its
claims and a summary of its proceedings. The applicable
statutory provision is section 7-5-2123, MCA, which
states:

(1) The board of county commissioners has
jurisdiction and power, under such limitations
and restrictions as are prescribed by law, to
cause to be published in a newspaper:

(a) at the adjournment of each session of
the board, a complete list of all claims
ordered paid for all purposes, showing the
name, purpose, and amount, and a fair summary
of the minutes and records of all of its
proceedings;

(b) annually, the county clerk's annual
statement of the financial condition of the
county.

(2) Publication of such minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of the financial statement must be made within 30 days after the presentation of the same to the board. The board shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor.

You suggest that the language of the statute is directory rather than mandatory, leaving the publication decision within the discretion of the board of county commissioners.

Under Montana law the question of whether a statute is directory or mandatory depends upon the intention of the Legislature, to be ascertained from a consideration of the object of the statute and the consequences that would result from continuing it one way or the other. See Hansen v. City of Havre, 112 Mont. 207, 217, 114 P.2d 1053, 1059 (1941); and Miller v. Aetna Life Ins. Co., 101 Mont. 212, 221, 53 P.2d 704, 708 (1936). See also Sutherland, Statutory Construction § 25.03 (1972). The Legislature enacted the predecessor of section 7-5-2123, MCA, in 1921 (§ 4465.21, R.C.M. 1921), giving a board of county commissioners the jurisdiction and power to publish in a newspaper, or otherwise, a statement of its proceedings and an annual financial statement. In 1927, the Legislature amended section 4465.21, R.C.M. 1921, to include the power to publish a list of claims plus a provision concerning the time frame for publication, i.e., within 21 days after a session's adjournment for the summary of proceedings and within 30 days after presentation to the board for the annual financial statement. The 1927 amendment is identical in substance to the currently existing statute, § 7-5-2123, MCA.

On several occasions since the 1927 amendment was enacted, the office of the Attorney General has answered the question of whether a board of county commissioners must publish in a newspaper a summary of its proceedings. These opinions, with which I concur, appear in Opinions of the Attorney General, volumes 13 at 42 (1929), 18 at 28 (1939), and 22 at 210 (1948), and conclude that the Legislature intended to make mandatory

such publication. In the 1939 and 1948 opinions, the Attorney General noted that the Legislature had met on numerous occasions since the issuance of the 1929 opinion, and had not seen fit to change the statutory language so as to make discretionary the publication of the commissioner's proceedings. The 1948 opinion mentioned that the rationale for the publication requirement was that the taxpayers of the county are entitled to know, by such publication, how, to whom, and for what their tax money is being spent. The opinion noted that the public policy that generally applies in Montana is to give broad public exposure to matters pertaining to the expenditure of public money. See Adoption of Bascom, 126 Mont. 129, 136, 246 P.2d 223, 226 (1952), for the proposition that where the public has an interest in the exercise of a power conferred by statute, the exercise is mandatory.

You note that the Board of County Commissioners of Lewis and Clark County intends to publish in a newspaper a notice that the Board's records are available for public inspection. Such action would not seem to comport with the language of section 7-5-2123, MCA. See Fletcher v. Paige, 124 Mont. 114, 118, 220 P.2d 484, 486 (1950), wherein the Supreme Court held that a statute which directs that a thing be done in a certain manner ordinarily implies that it shall not be done in any other manner. Moreover, the Board's contention that its decision not to publish its claims and summary of its proceedings would save a substantial amount of money is not a justification for failure to publish. See Dale v. First National Bank of Rushmore, 178 Minn. 484, 227 N.W. 499 (1929).

Finally, it is noteworthy that in 1974 the District Court for the Fifth Judicial District (Madison County) ordered the Madison County Board of County Commissioners to publish in a newspaper its claims and proceedings in the form and substance set forth in section 7-5-2123, MCA (codified at that time as section 16-2023, R.C.M. 1947). Madison County v. Tichenor, No. 6296.

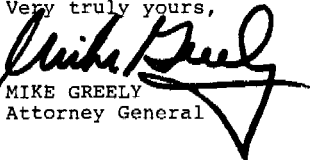
THEREFORE, IT IS MY OPINION:

Section 7-5-2123, MCA, requires a board of county commissioners, at the adjournment of each session of the board, to publish in a newspaper a complete

-2185-

list of all claims ordered paid and a fair summary
of its proceedings.

Very truly yours,



MIKE GREELY
Attorney General

24-12/30/82

Montana Administrative Register

VOLUME NO. 39

OPINION NO. 78

COUNTY OFFICERS AND EMPLOYEES - Longevity payments for deputy sheriffs who have worked part-time;
EMPLOYEES, PUBLIC - Longevity payments for deputy sheriffs who have worked part-time;
SALARIES - Longevity payments for deputy sheriffs who have worked part-time;
SHERIFFS - Longevity payments for deputies who have worked part-time;
WORDS AND PHRASES - "Year of service";
MONTANA CODE ANNOTATED - Sections 2-18-306, 7-4-2509(1)(b), and 7-4-2510, MCA.

HELD: Under section 7-4-2510, MCA, "year of service" means each 2,080 hours of employment when used to compute longevity payments for deputy sheriffs or undersheriffs who have worked for the department on a part-time basis.

20 December 1982

William A. Spoja, Jr.
Fergus County Attorney
Fergus County Courthouse
Lewistown, Montana 59457

Dear Mr. Spoja:

You have requested my opinion concerning the following question:

Must part-time employment for deputy sheriffs for years prior to October 1, 1981, be counted toward years of service with the sheriff's department for calculation of the longevity payment under section 7-4-2510, MCA?

Section 7-4-2510, MCA, provides as follows:

Sheriff's department -- longevity payments. Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment

amounting to 1% of the minimum base annual salary for each year of service with the department. This payment shall be made in equal monthly installments.

The specific issue presented by your question is whether a "year of service" as that term is used in the statute refers only to full-time employment, or whether part-time employment would also qualify. The term "year of service" is not defined in the Code, nor has it been defined by the Montana Supreme Court.

If the language of a statute is plain, unambiguous, direct, and certain, the statute speaks for itself. If the statute is ambiguous or unclear, then the legislative intent must be pursued, if possible. Shannon v. Keller, 37 St. Rptr. 1079, 1081, 612 P.2d 1293, 1294 (1980). If there is any doubt concerning the meaning of a given term in a statute, it is to be determined by the context in which it is employed, and by the purpose and subject of the statute. State ex rel. Snidow v. State Board of Equalization, 93 Mont. 19, 34, 17 P.2d 68, 72 (1932).

Section 7-4-2510, MCA, was enacted as part of House Bill 558 (1981 Mont. Laws, ch. 603). House Bill 558, as originally introduced, did not mention longevity payments. That statutory provision resulted from eventual consolidation of House Bill 558 with Senate Bill 375. Minutes from early committee hearings on Senate Bill 375 indicate that the intention of the drafters of that bill, in including the provisions for longevity payments, was to aid in the retention of experienced sheriff's department officers by making the job more financially attractive to them the longer they worked for the department. Thus, the policy of section 7-4-2510, MCA, is to induce deputy sheriffs and undersheriffs to remain with the sheriff's department by rewarding them with extra compensation commensurate with length of service. If part-time experience is excluded from the calculation of longevity benefits flowing from section 7-4-2510, MCA, this would defeat the Legislature's intent and would result in less incentive for experienced part-time officers to remain with the department.

It is an established rule of statutory construction that statutes must be read together and harmonized if

possible to give effect to the legislative intent. Gaffney v. Industrial Accident Board, 133 Mont. 448, 452, 324 P.2d 1063, 1065 (1958). A normal work year consists of 2,080 hours of labor. This figure is the one upon which compensation for state employees is presently based. See § 2-18-306, MCA. Similarly, section 7-4-2509(1)(b), MCA, states that, in the case of the sheriff's department employees, the aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours. These statutes appear to express the general legislative intent that a year of employment is equal to fifty-two forty hour weeks, or 2,080 hours. The term "year of service" as used in section 7-4-2510, MCA, should therefore be defined as consisting of 2,080 hours of service. Based upon this definition, a deputy sheriff would be entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for every 2,080 hours of service with the department. This interpretation of section 7-4-2510, MCA, results in a reasonable construction of the statute and promotes the legislative policy of retention of experienced sheriff's department officers.

THEREFORE, IT IS MY OPINION:

Under section 7-4-2510, MCA, "year of service" means each 2,080 hours of employment when used to compute longevity payments for deputy sheriffs or undersheriffs who have worked for the department on a part-time basis.

Very truly yours,



MIKE GREELY
Attorney General

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, Montana State Capitol, Helena, Montana, 59620.

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

Definition: 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 Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1982. This table includes those rules adopted during the period October 1, 1982 through December 31, 1982, 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, 1982, this table and the table of contents of this issue of the MAR.

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