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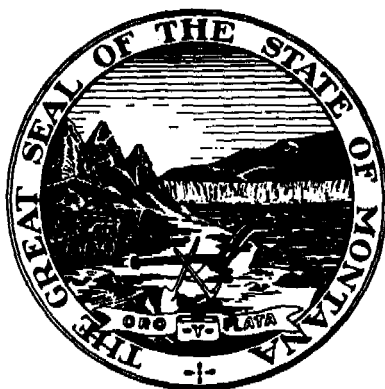
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RESERVE

MONTANA ADMINISTRATIVE REGISTER

STATE OF MONTANA
MARCH 17, 1983
PAGES 194-237

1983 ISSUE NO. 5
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PAGES 194-237



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PROPOSED ADOPTION
of rules relating to	)	OF RULES RELATING TO
sexual harassment	)	SEXUAL HARASSMENT
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On April 18, 1983, the Department of Administration proposes to adopt rules which pertain to sexual harassment.
2. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the sexual harassment policy.

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to prohibit sexual harassment of state employees. This prohibition applies to management and non-management employees.

(2) It is not the purpose of this policy to intrude upon the personal lives of employees or to interfere with social relationships. Sexual harassment, however, is unacceptable behavior when carrying out the business of state government and will not be condoned or tolerated.

(3) Any employee who believes he or she is being subjected to sexual harassment by anyone connected with his or her work is encouraged to report the matter promptly, as provided in this policy.

(4) Substantiated violations of this policy by any state employee will result in discipline.

(5) It is the objective of this policy to develop guidelines in compliance with Governor's Executive Order No. 7-82, The Montana Human Rights Act, and Sec. 703 of Title VII of the Civil Rights Act of 1964.

AUTH & IMP: 2-18-102, MCA

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Sexual harassment" means any deliberate or repeated unsolicited comments, gestures or physical contact of a sexual nature when:

(a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

AUTH & IMP: 2-18-102, MCA

RULE IV AGENCY POLICY STATEMENT (1) Each agency of the executive branch shall within 90 days of the effective date of this policy, adopt a policy statement prohibiting sexual harassment in the agency.

(2) The policy statement shall be adopted over the signature of the agency head.

(3) The policy statement shall be approved by the Personnel Division, Department of Administration.

(4) The policy statement shall be disseminated to all agency employees.

AUTH & IMP: 2-18-102, MCA

RULE V COMPLAINT PROCEDURE (1) Each agency of the executive branch shall within 90 days of the effective date of this policy, adopt a procedure to receive and investigate complaints of sexual harassment.

(2) This procedure must be approved by the Personnel Division, Department of Administration.

(3) The procedure shall contain at a minimum, the following steps:

(a) An employee who believes he or she has been the subject of sexual harassment must immediately bring the alleged act to the attention of the immediate supervisor or to the first level supervisor who is not involved in the alleged act.

(b) The supervisor must investigate the complaint within 30 days of notification.

(c) The supervisor shall notify the agency Equal Employment Opportunity officer, who may also participate in the investigation.

(d) The supervisor or the EEO officer shall prepare a report and shall make a non-binding recommendation to the agency head as a result of the investigation.

(e) The agency head shall make the final determination within 30 days after receiving the report on the proposed action to be taken.

(f) The report and the agency head's decision shall be made known to the employee making the complaint, to the employee about whom the complaint is made, the division administrator(s) who supervise the employees involved, and the EEO officer. Otherwise, the report and decision made as a result of the internal investigation shall remain confidential.

(4) Agency heads shall post the complaint procedure in each bureau and in each location where the agency conducts business.

AUTH & IMP: 2-18-102, MCA

RULE VI VIOLATIONS OF POLICY (1) Substantiated violations of this policy shall result in discipline in compliance with the Discipline Handling rules as set forth in Title 2, chapter 21, sub-chapter 65, ARM. Appropriate discipline may include discharge, if the initial violation is sufficiently severe or if lesser violations are repeated.

(2) An employee has a right in the Grievance rules as set forth in Title 2, chapter 21, sub-chapter 80, ARM, to file a grievance concerning disciplinary actions.

AUTH & IMP: 2-18-102, MCA

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

AUTH & IMP: 2-18-102, MCA

3. These rules are proposed to implement Governor's Executive Order No. 7-82, relating to sexual harassment; to define the term; to require agencies to establish procedures for dealing with complaints of sexual harassment, and to provide for disciplinary action when allegations of sexual harassment are substantiated.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to:

Dennis M. Taylor, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than April 15, 1983.

5-3/17/83

MAR Notice No. 2-2-114

5. If a person who is directly affected by the proposed adoption of rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than April 15, 1983.

6. If the agency receives requests for a public hearing on the proposed adoption 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 at least 25 persons.

7. The authority of the agency to make the proposed adoption is based on Section 2-18-102, MCA, and the rules implement Section 2-18-102, MCA.

Morris L. Bruzett
Morris L. Bruzett, Director
Department of Administration

Certified to the Secretary of State March 7, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

In the matter of the proposed amendment of 8.22.1606 to add trifecta betting and the proposed adoption of new rules for trifecta wagering under a new sub-chapter 18.)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.22.1606 TYPES OF BETS, and PROPOSED ADOPTION OF A NEW SUB-CHAPTER 18, RULES OF TRIFECTA WAGERING
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TO: All Interested Persons:

1. On Friday, April 15, 1983, a public hearing will be held in the downstairs conference room, 1430 9th Avenue, Helena, Montana to consider the amendment of 8.22.1606 to add trifecta betting and the proposed adoption of a new sub-chapter, rules of trifecta betting.

2. The proposed amendment of 8.22.1606 will add a new subsection (3) and renumber the remaining subsections and will read as follows: (new matter underlined, deleted matter interlined)

"8.22.1606 TYPES OF BETS (1) The ~~Quintela~~ Quinella is a contract by the purchaser of a ~~Quintela~~ Quinella ticket to select the first two horses to finish in a race.

(2) ...

(3) The Trifecta is a contract by the purchaser of a Trifecta ticket to select the first three horses in their respective order of finish in a race.

(4) ~~(3)~~ The Big Q is a contract by the purchaser of a Big Q ticket to select the first two horses in two successive races.

(5) ~~(4)~~..."

3. The board is proposing the amendment to include trifecta betting under the type of bets and to correct the spelling of quinella. The authority of the board to make the proposed amendment is based on section 23-4-104, MCA and implements section 23-4-301, MCA.

4. The proposed adoption of rules of trifecta wagering will read as follows:

"I. TRIFECTA (1) In addition to the betting transactions permitted by ARM 8.22.1606, a licensee may offer a trifecta as provided by this sub-chapter.

(2) Trifecta means a betting transaction in which the purchaser of a ticket undertakes to select in the exact order of finish the first three horses to finish a race on which the feature is operated.

(3) The trifecta is not a parlay and has no connection with or relation to the win, place and show pools shown on the totalisator board. All tickets on the trifecta will be calculated in an entirely separate pool."
(authority - Section 23-4-104, MCA; implement - Section 23-4-301, MCA)

"II. REQUIREMENTS OF LICENSEE (1) Licensees providing trifecta wagering shall, in addition to other requirements, comply with the requirements of this rule.

(2) No entries or field horses in a race comprising the trifecta are allowed.

(3) No licensee shall offer trifecta wagering on any race when there are less than eight horses scheduled to start.

(4) Urine samples shall be taken from all horses which started in a race on which there was trifecta wagering and all urine samples shall be tested by the official racing chemist with the costs therefore borne by the licensee.

(5) Trifecta wagering shall be allowed only at tracks that can demonstrate to the board that their facilities can properly handle and implement trifecta wagering. [authority - Section 23-4-104, MCA; implement - Section 23-4-301, MCA]

"III. POOL CALCULATIONS (1) The pay out price for a trifecta pool shall be calculated in the following manner:

(a) the legal percentage shall be deducted from the total amount bet in the pool to determine the net pool.

(b) the net pool shall be divided by the value of tickets bet on the winning combination.

(c) the quotient obtained pursuant to paragraph (b) shall be multiplied by the purchase price of each ticket on the winning combination.

(2) In the event that no ticket is sold on the horses finishing first, second, and third in the exact order, then go to tickets that have been sold, coupled in a combination finishing nearest the official order of finish.

(3) The following sequence based on the official order of finish shall be used to determine the combination referred to in subsection (4):

(a) first, second, and fourth

(b) first, third, and fourth

(c) second, third and fourth

(d) first, second and fifth

(e) first, third and fifth

(f) first, fourth and fifth; and

(g) sequentially thereafter.

(4) Where only two horses finish in a race on which a trifecta feature is operated, the pool shall be calculated in the following manner:

(a) The net pool shall be divided by the value of tickets sold in the pool on horses selected to finish first and second in the exact order of the official result coupled with any other horse that started in the race.

(5) Where only one horse finishes in a race on which a trifecta feature is operated, the pool shall be

calculated in the following manner:

(a) The net pool shall be divided by the value of tickets sold in the pool selecting that horse to finish first, coupled with any two other horses started in the race.

(6) Where there is a dead heat in any position of the official result, the pay out price for the trifecta pool shall be calculated in the following manner:

(a) the legal percentage shall be deducted from the total amount bet in the pool to determine the net pool;

(b) the total value of all bets placed on all winning combinations shall be deducted from the net pool to determine a calculating pool;

(c) the calculating pool shall be divided into as many equal portions as there are winning combinations;

(d) the value of tickets of each respective winning combination shall be divided into its respective portion of the calculating pool;

(e) \$1.00 shall be added to the quotients obtained pursuant to paragraph (d); and

(f) each sum obtained pursuant to paragraph (e) shall be multiplied by the purchase price of each ticket.

(7) If a horse or horses in the trifecta feature are scratched or excused by the stewards after wagering has commenced or should any horse or horses be prevented from racing because of the failure of stall doors of the starting gate to open, tickets on that horse or those horses shall be deducted from the trifecta pool and the money refunded to the purchasers of tickets on the horse so excused or prevented from racing.

(8) The state parimutuel supervisor and the mutuel manager shall examine the pattern of wagering made on a trifecta wagered race prior to post time and shall confer with respect thereto. If the state parimutuel supervisor concludes that the wagering pattern is of such an irregular nature as to warrant reasonable concern that illegal or corrupt practices may be intended with respect to the race in question, he shall notify the presiding stewards of his findings and the stewards shall declare the race off and all trifecta wagers shall be promptly refunded.

(9) Where the outcome of a race is such that the distribution of the pool is not covered by this section, the track parimutuel manager shall decide how the pool shall be distributed." (authority - Section 23-4-104, MCA; implement - Section 23-4-301, MCA)

5. The board is proposing the new rules to allow licensed tracks to offer trifecta wagering as an alternative to twin quin which has been allowed in Montana but is no longer an option under the new Cash-Sell computer parimutuel machines.

6. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Stephen H. Meloy, Board of Horse Racing, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than April 14, 1983.

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

8. The authority and implementing sections are listed after each proposed change.

BOARD OF HORSE RACING
HAROLD HOPWOOD, CHAIRMAN

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 7, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the amendments) NOTICE OF PROPOSED AMENDMENTS
of 8.24.404 concerning seals) OF 8.24.404 SEALS AND ISSUE
and 8.24.406 concerning) LICENSES and 8.24.406 RENEWALS
renewals.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 16, 1983, the Board of Landscape Architects proposes to amend rules 8.24.404 concerning seals and 8.24.406 concerning renewals.

2. The proposed amendment of 8.24.404 will read as follows:
(new matter underlined, deleted matter interlined)

"8.24.404 SEALS AND ISSUE LICENSES (1) Seals: Upon registration by the board, the registrant will be advised that he may shall secure an official seal, and will be informed of the requirements of the law with regard to the use of such seal.

(a)..."

3. The board is proposing the rule amendment as the rule now reads that the registrant will be advised that he may secure an official seal. Section 37-66-308 (2), MCA requires that the registrant shall have a seal approved by the board. The change from "may" to "shall" is to provide consistency with the statute. The authority of the board to make the proposed change is based on section 37-66-202, MCA and implements section 37-66-308 (2), MCA.

4. The proposed amendment of 8.24.406 will read as follows:
(new matter underlined, deleted matter interlined)

"8.24.406 RENEWALS (1) Certificates of registration shall-expire are renewable on or before the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the board to notify every person registered under the act, of-the-date-of-expiration-of his-certificate-and-the-amount-of-the-fee-that-shall-be required-for-its-renewal-for-1-year, of the date his certificate is required to be renewed for the 1 year period and the fee required for renewal. such Such notice shall be mailed at-least-3-months-in-advance-of-the-date of-expiration-of-said-certificate, no later than May 30 of the current renewal year. Renewal may be effected at any time during the month of June by payment of the fee. The failure on the part of any registrant to renew his certificate annually in the month of June as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of June shall be increased by 10% for each month or fraction of a month that payment of renewal is delayed up to 60-days 6 months after which time said certificate-of-registration-shall-expire; the registrant

must reapply as a new applicant. The board will send registrants a notice of the expiration of the renewal grace period at least 30 days prior to its termination."

5. The amendment is proposed as the rule now states the board will notify a registrant of renewal at least 3 months prior to expiration. The board feels this is too far in advance as registrants are apt to misplace notices received so far ahead of the renewal date. It is felt that 1 month prior notice is more feasible. The 6 month grace period and penalty is proposed as the rule now allows a 60 day period after the June 30th deadline in which a registrant can renew, but gives no direction as to what a registrant must do to reinstate his certificate to practice after that period. The rule simply states the certificate expires. By amending the rule to read "after which time the registrant must reapply as a new applicant" the board is giving the registrant a definite method in which to validate an expired license. The 6 month grace period would give the registrant ample time for renewing. The board feels there is a need for this change because in the past if an applicant did not renew within the 60 day time frame, the board felt they did not have the authority to impose any further penalty on the late registrant and had no way of effectively handling an expired license. The board feels the proposed rule amendment would be beneficial for the registrants and would give clear guidelines to the registrant that failed to renew and allowed his license to expire. The proposed change will give the board the authority to handle expired licenses fairly and consistently. The authority of the board to make the proposed change is based on section 37-66-202, MCA and implements section 37-66-307, MCA.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 14, 1983.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 14, 1983.

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

9. The authority and implementing sections are listed after each proposed change.

BOARD OF LANDSCAPE ARCHITECTS
ESTHER HAMEL, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 7, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACISTS

In the matter of the proposed)	NOTICE OF PROPOSED AMENDMENT
amendments of 8.40.403 concern-)	OF ARM 8.40.403 PASSING
ing examination for licensure)	SCORE FOR EXAMINATION; 8.40.
as a registered pharmacist; 8.)	404 FEE SCHEDULE; 8.40.602
40.404 concerning the fee)	{3} SANITATION AND EQUIPMENT
schedules; 8.40.602 subsection)	REQUIREMENTS; 8.40.603 {1}
{3} concerning sanitation and)	NEW PHARMACY; 8.40.604 CHANGE
equipment; 8.40.603 subsection)	IN LOCATION; 8.40.605 CHANGE
{1} concerning new pharmacies;)	IN OWNERSHIP; 8.40.706 {1} {i}
8.40.604 concerning change in)	CLASS IV FACILITY; 8.40.902
location; 8.40.605 concerning)	{6} INTERNSHIP PROGRAM DEFINI-
change in ownership; 8.40.706)	TIONS; 8.40.1209 FEES; and
subsection {1} {i} concerning)	PROPOSED REPEAL OF 8.40.908
class IV facilities; 8.40.902)	PRACTICAL EXAMINATION
subsection {6} concerning)	
internship program definitions;)	NO PUBLIC HEARING CONTEMPLATED
and 8.40.1209 concerning the)	
fees; and proposed repeal of 8.)	
40.908 concerning practical)	
examinations for interns)	

TO: All Interested Persons:

1. On April 16, 1983, the Board of Pharmacists proposes to amend and repeal the above stated rules.

2. The proposed amendment of 8.40.403 will change the catchphrase, add new subsections {1} and {2} renumber {1} and {2} as {3} and {4} and add a new subsection {5} and will read as follows: (new matter underlined, deleted matter interlined)

"8.40.403 PASSING-SCORE-FOR-EXAMINATION- EXAMINATION
FOR LICENSURE AS A REGISTERED PHARMACIST

{1} The examination for licensure under section 37-7-302, MCA, shall be given at least 2 times during each fiscal year of the state. The board shall determine the content and subject matter of each exam, the place, time and date of administration, and those persons who have successfully passed the examination.

{2} The examination shall be prepared to measure the competence of the applicant to engage in the Practice of Pharmacy. The board may employ and co-operate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed such an examination.

{3} A general average of not less than 75 in all subjects and not less than 60 in chemistry, mathematics, pharmacology, pharmacy nor less than 75 in practice of pharmacy shall be a passing score for the examination.

~~(2)~~ (4) The candidate has the option of retaking one or more subjects at the next scheduled testing dates in order to bring his average up to a score of 75 or higher. In any event, the candidate must retake any subject that a passing score as defined above was not achieved.

(5) In addition the board shall administer a jurisprudence examination. This examination shall be prepared to measure the competence of the applicant regarding the statutes and rules governing the Practice of Pharmacy. A score of not less than 75 shall be a passing score for this examination."

3. The board is proposing the amendment to outline what the examination for licensure as a registered pharmacist entails and also to require applicants to take a jurisprudence examination to ensure that the applicants are knowledgeable with the statutes and rules regulating the practice of pharmacy in Montana. The authority of the board to make the rule change is based on section 37-7-201, MCA and implements sections 37-7-201, and 302, MCA.

4. The proposed amendment of 8.40.404 will read as follows: (new matter underlined, deleted matter interlined)

"8.40.404 FEE SCHEDULE

(1) *Application for reciprocity	\$200.00	225.00
(2) Original registration for pharmacist		50.00
(a) -- Renewal		15.00
(b) -- Late renewal		30.00
(3) Certified pharmacy- Pharmacist annual renewal fee		50.00
(a) -- *Original certificate		100.00
(b) -- Change-in-ownership-		100.00
(c) -- Annual renewal fee		35.00
(d) -- *Late renewal fee		100.00
(4) *Stores-(other-than-pharmacies) Pharmacist late renewal fee		100.00
(5) -Examination fee		55.00
<u>Certified pharmacy original certification (includes original, change in location, and change in ownership)</u>		100.00
(6) Certified pharmacy annual renewal fee		75.00
(7) Certified pharmacy late renewal fee		150.00
(8) Class IV Facility, certified pharmacy license, (original and renewal)		50.00
(9) Intern registration		40.00
(10) Copies of documents		10.00
(11) Certification of grades/transfer of internship hours		10.00
(12) Application for examination		75.00

~~*Indicates these fees which are set by statute"~~

5. The amendment is proposed by the board to set fees commensurate with costs of operating the board programs. The

proposed fees prescribed are those the board has determined necessary to cover those costs. The authority of the board to make the proposed amendment is based on sections 37-7-201, MCA and 37-1-134, MCA. The rule implements sections 37-1-134, 37-7-201, 302, 303, and 321, MCA.

6. The proposed amendment of 8.40.602 deletes subsection (3) (a) and renumbers the subsections immediately following (a) and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule located at page 8-1147, ARM)

"8.40.602 SANITATION AND EQUIPMENT REQUIREMENTS

(1)...

(3)...

~~(a) -- latest revisions, including supplements of the United States Pharmacopoeia, National Formulary,~~

(a) (b) ..."

7. The amendment is proposed as the board has determined that since there are a number of excellent reference materials available, the pharmacists should be able to choose the materials that they feel will keep them up to date with the latest drug information and laws governing the profession of pharmacy. The authority of the board to make the proposed amendment is based on section 37-7-201, MCA and implements section 37-7-201 (2) (b), MCA.

8. The proposed amendment of 8.40.603 amends subsection (1) only and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule located at 8-1148, ARM)

"8.40.603 NEW PHARMACY (1) A pharmacy opening for business must first secure a license and be registered with the board before it may be lawfully conducted. ~~A fee required by section 37-7-321 (2), MCA is charged for issuing such original license.~~ Application for license to operate a new pharmacy, accompanied by the required fee, should be made at least 30 days before such pharmacy is to be opened for business so that the same can be reviewed by the board.

(a)..."

9. The amendment is proposed by the board as section 37-7-321(2), MCA no longer specifies the required fee. The required fee will be set out in the fee schedule in rule 8.40.404. The authority of the board to make the proposed amendment is based on section 37-7-201, MCA and implements section 37-7-321, MCA.

10. The proposed amendment of 8.40.604 will read as follows: (new matter underlined, deleted matter interlined)

"8.40.604 CHANGE IN LOCATION (1) Whenever a pharmacy changes its location, ~~it shall apply to the board for amendment of its annual license to cover the new location~~ the original license becomes void and must be surrendered to the board. An application for original certification,

accompanied by the required fee, should be made at least 30 days before such change occurs so that the same can be reviewed by the board. There shall be no charge for such amendment. -- (Affidavit forms for change of location may be secured from the board office.)"

11. The amendment is being proposed by the board because section 37-1-134, MCA allows boards to set fees commensurate with costs of administering programs and the board has determined that the costs associated with the change in location are equal to those for issuing a new certified pharmacy license. The proposed amendment also specifies that the application for a change in location should be filed 30 days prior to the change to allow processing time. The authority of the board to make the proposed amendment is based on section 37-7-201, MCA and implements section 37-7-321, MCA.

12. The proposed amendment of 8.40.605 will read as follows: (new matter underlined, deleted matter interlined)

"8.40.605 CHANGE IN OWNERSHIP (1) When a pharmacy changes ownership, the original license becomes void and must be surrendered to the board, and a new license secured by the new owner or owners. ~~This is required even in case there is no change in the name of the pharmacy, or in the registered pharmacist in charge of the pharmacy. An established pharmacy, operating under new ownership is regarded as a new enterprise and the fee required by section 37-7-321 (2), MCA must be paid by the new owner for a new license.~~ Application should be made at least 30 days before such change occurs so that the same can be reviewed by the board."

13. The amendment is being proposed by the board as section 37-7-321 (2), MCA, no longer specifies the required fee. The required fee will be set out in the fee schedule in rule 8.40.

404. The proposed amendment also specifies that the application for change in ownership should be filed 30 days prior to the change to allow processing time and deletes unnecessary wording.

The authority of the board to make the proposed amendment is based on section 37-7-201, MCA and implements section 37-7-321, MCA.

14. The proposed amendment of 8.40.706 will amend subsection (1) (i) of the rule and will read as follows: (new matter underlined, deleted matter interlined)

"8.40.706 CLASS IV FACILITY (1)...

(i) That each family planning center must apply for a license from the board and submit the required fee for a Class IV facility. This license will be issued for a period of one year, i.e., July 1 to June 30, and will be renewed each year providing all conditions herein stated are met. ~~The cost of this license will be \$5.00 per year.~~ This license is to be displayed in a conspicuous place at the facility."

15. The amendment is being proposed because section 37-1-134, MCA allows boards to set fees commensurate with costs of administering programs and the prescribed fee is being proposed under the fee schedule rule, 8.40.404. The renewal provision is already addressed in rule 8.40.608, which applies to all certified pharmacies. The amendment also clarifies that the license must be displayed in a conspicuous place at the facility. The authority of the board to make the proposed amendment is based on section 37-7-201, MCA and implements sections 37-7-201, and 321, MCA.

16. The proposed amendment of 8.40.902 amends subsection (6) and will read as follows: (new matter underlined, deleted matter interlined)

"8.40.902 INTERNSHIP PROGRAM DEFINITIONS (1)...

(6) 'Internship period' means 1500 hours of practical experience in an approved pharmacy, hospital or other facility. The intern must acquire a minimum of 20 hours experience per calendar week in not less than 5 days per calendar week, and may acquire a maximum of 48 hours experience per calendar week. However, the student may acquire up to 500 700 hours concurrently with school attendance in courses, clinical pharmacy programs, or demonstration projects which have been approved by the Tri-Partite Committee and/or the board.

(7)..."

17. The board is proposing the amendment to allow interns to acquire up to 700 hours of practical experience concurrently with school attendance because of new clerkship courses added to the curricula at the School of Pharmacy, University of Montana, which allows student participation in on-site projects. The authority of the board to make the proposed amendment is based on section 37-7-201, MCA and implements section 37-7-201 (2)(f), MCA.

18. The proposed amendment of 8.40.1209 will read as follows: (new matter underlined, deleted matter interlined)

"8.40.1209 FEES (1) The fees to be assessed for registration to manufacture, distribute, dispense, conduct research, or analyze a dangerous drug shall be assessed according to the following schedule:

<u>REGISTRATION</u>	<u>ANNUAL FEE</u>
(a) manufacture	\$100.00
(b) distribute	100.00
(c) dispense - pharmacies	10.00 25.00
(d) conduct research	10.00 50.00
(e) analyze	10.00 50.00"

19. The amendment is proposed by the board to set fees commensurate with costs of operating the board program and section 50-32-103, MCA allows the board to set the fees for administering the dangerous drug act up to \$100.00.

The authority of the board to make the proposed amendment is based on section 50-32-103, MCA and implements section 50-32-103, MCA.

20. The proposed repeal of 8.40.908 repeals the rule in its entirety. Full text of the rule is found at page 8-1165, Administrative Rules of Montana.

21. The board is proposing to repeal the rule because the practice of pharmacy section of the National Association of Boards of Pharmacy Licensure Examination (NABPLEX) utilized by the board more than fulfills the need for a practical examination and therefore is a duplication that is unnecessary. The authority of the board to make the proposed repeal is based on section 37-7-201, MCA and implemented sections 37-7-201, and 302, MCA.

22. Interested persons may submit their data, views or arguments concerning the proposed amendments and repeal in writing to the Board of Pharmacists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than April 14, 1983.

23. If a person who is directly affected by the proposed amendments and repeal wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Pharmacists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than April 14, 1983.

24. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a public 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 170 based on the 1700 licensees.

25. The authority and implementing sections are cited after each proposed change.

BOARD OF PHARMACISTS
D. WAYNE BOLLINGER, R.Ph.,
PRESIDENT

BY:


GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 7, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.54.410 concern-) OF ARM 8.54.410 FEE SCHEDULE
ing the fee schedule.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 16, 1983, the Board of Public Accountants proposes to amend rule 8.54.410 concerning the fee schedule.
2. The amendment as proposed will read as follows: (new matter underlined, deleted matter interlined)

"8.54.410 FEE SCHEDULE

(1) ...

(6) Cancellation-and-request-for-refund-fee

C-P-A-A-B-P-A-V-10-00

Candidate listings..... 50.00

Candidate listings - labels..... 75.00

(7) Candidates cancelling their examinations and requesting a refund will be charged a maximum fee of \$25.00 to cover administrative costs.

(a) Those candidates being re-examined in only 1 part of the exam will receive no refund for cancellation."

3. The board is proposing the amendment to set the above fees commensurate with costs associated with the listings and cancellation of exams. Section 37-1-134, MCA allows the boards to set fees commensurate with program costs. These are the fees the board has determined are necessary to cover the above costs.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Public Accountants, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 14, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Public Accountants, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 14, 1983.

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

7. The authority of the board to make the proposed amendment is based on section 37-1-134, MCA and implements the same.

BOARD OF PUBLIC ACCOUNTANTS
JACK DOBBINS, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 7, 1983.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA
MILK CONTROL DIVISION

In the matter of the amendment NOTICE OF PROPOSED AMENDMENT
of rule 8.79.301 regarding OF RULE 8.79.301
licensee assessments

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 17, 1983, the Department of Commerce proposes to amend Rule 8.79.301 relating to an assessment to be levied upon licensees subject to the Milk Control Act. The proposed amendment will become effective July 1, 1983.

2. The purpose of the amendment is to change the effective date of the rule as it applies to the assessments. There is no change in the amount of the assessments. The rule as proposed to be amended would read as follows:

"8.79.301 LICENSEE ASSESSMENTS

(1) Pursuant to Section 81-23-202, MCA, as amended, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the fiscal year beginning July 1, ~~1982~~ 1983, and ending June 30, ~~1983~~ 1984, are hereby levied upon the Milk Control Act licensees of this Department.

(a) A fee of eight cents (\$0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

(b) A fee of eight cents (\$0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of four cents (\$0.04) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of four cents (\$0.04) per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor."

3. Interested persons are asked to note that there is no change in the amount of assessment proposed for fiscal year 1984. The purpose of the amendment is merely to change the effective dates from July 1, 1982 through June 30, 1983 to July 1, 1983 through June 30, 1984.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, no later than April 30, 1983.

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 along with any written comments he has to the above address no later than April 15, 1983.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty five (25), whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent (10%) of those persons directly affected has been determined to be 33 persons based on an estimate of 331 resident and non-resident producers, producer-distributors, and jobbers subject to this assessment.

7. The authority of the agency to make the proposed amendment is based on Section 81-23-202 MCA, and implements Section 31-23-202 MCA.

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State March 7, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of Rule 8.86.301 (8)(b), (c),)	PROPOSED AMENDMENT OF RULE
(d), (e), (9)(a): as it re-)	8.86.301 (8)(b), (c), (d),
lates to fixing the class III)	(e), (9)(a): PRICING RULES
formula price and updating the)	
freight allowance for class I)	DOCKET NO. 64-83
milk.)	

TO: All Interested Persons

1. On April 22, 1983 at 9:00 a.m., MST, or as soon thereafter as interested parties can be heard, a public hearing will be held in the lower conference room in the Department of Commerce at 1424 Ninth Avenue, Helena, Montana.

2. The hearing will be held at the request of Montana Dairymen's Association and Beatrice Foods Company of Billings, Great Falls, Missoula, and Kalispell, Montana. The petition filed by Montana Dairymen's Association proposes amending Rule 8.86.301 (8)(b), (c), (d), and (e) as follows: (full text of rule is located at pages 8-2539 through 8-2549 Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1) . . .

(8) . . .

(b) All milk received by the plant of origin that is in excess of any beneficial use by said plant must be shipped to a different market for manufacturing purposes to prevent waste. Such milk, being classified by statute and rule as class III, will be subject to a special reduced price fixed by the board and applied selectively by board auditors to those producers whose production exceeds their average production for the preceding two years by at least 15%. The allowance of 15% in excess of average production assures the plant of an adequate supply of milk for plant needs and is therefore subject to the regularly established class III price as prescribed by the formula established by the Board of Milk Control. This reduced price will apply in any month of the year that the above conditions exist. The reduction in the formula price for class III milk will be accomplished by subtracting the difference between the price received by the plant for this class of milk and the established class III price ordinarily paid to producers for class III usage, from the plant's cost of hauling this milk to another market based on ninety-five cents (\$0.95) per running mile. In the event that the plant receives less than the established Montana price for class III, the difference will be added to the hauling cost as computed above.

(c) Any new producer entering the market after the effective date of this rule will be accorded plant usage for his milk until he has established a production record for a period not to exceed six (6) months exclusive of the months of May, June, and July. After he has established a production record, such producer will participate in milk shipped to other markets on the same basis as all other plant producers.

(d) In the event that total class III usage allocated to producers must be shipped to another market because of inventory differences supplying regular plant class III usage, then all producers will share in such usage pro-rata.

(e) Price paid to producers for class III milk will be computed and announced monthly in accordance with the above formula and the price calculated during the current month, will be the price paid during the succeeding month.

(9)"

3. The purpose for Montana Dairymen's Association proposing to amend Rule 8.86.301 (8) (b), (c), (d), and (e) is to require those producers who are responsible for producing surplus milk in excess of the plant's needs, to absorb the cost of disposing of that surplus in the form of a lower price. Because of the selective characteristics of this proposed amendment, Montana Dairymen's Association requests the change on a all or a no change at all basis.

4. The petition filed by Beatrice Foods Company of Billings, Great Falls, Missoula, and Kalispell proposes amending Rule 8.86.301 (9) (a) as follows: (full text of rule is located at pages 8-2539 through 8-2549 Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1)

(9)

(a) The following maximum freight allowance may be charged producers of a licensed distributor or dealer, whose plant is located within Montana on transfers of bulk milk, a major portion of which is used class I, between distributors situated more than twenty-five (25) road miles apart, regardless of the market area or state of the receiving plant:

DISTANCE		MAXIMUM FREIGHT ALLOWANCE (per hundredweight)	
25	- 50 miles	25¢	.365
51	- 75 miles	40¢	.55
76	- 100 miles	50¢	.73
101	- 150 miles	60¢	1.10
151	- 200 miles	70¢	1.46
201	- 250 miles	80¢	1.83
251	- 300 miles	80¢	2.19
301	- 350 miles or more	95¢	2.56

(b)"

5. Beatrice Foods Company requests Rule 8.86.301 (9) (a) be amended to update freight allowances which were established in 1968 so they are commensurate with current freight costs.

6. Interested persons may present data, views, or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620-0422 no later than April 18, 1983.

7. Mr. Geoffrey L. Brazier, 1424 Ninth Avenue, Helena, Montana has been designated to preside over and conduct the hearing.

8. The authority of the Board of Milk Control to conduct the hearing is based on section 81-23-302, MCA, and implements the same section.

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

By William E. Ross
William E. Ross, Chief
Milk Control Bureau

Certified to the Secretary of State March 7, 1983.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PROPOSED ADOPTION
of Rule I Certification of)	OF RULE I CERTIFICATION OF
Exchange Teachers)	EXCHANGE TEACHERS
)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 16, 1983, the Board of Public Education proposes to adopt Rule I that relates to certification of exchange teachers.

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

RULE I CERTIFICATION OF EXCHANGE TEACHERS (1) A Class 5 certificate may be issued for one year to a teacher, administrator or specialist who is on an exchange program with a school district.

AUTH: 20-4-102

IMP: 20-4-203

3. The board of public education is proposing this rule because rule 10.57.105, Certification of Non-Citizens, was repealed effective February 26, 1982 because of legislation deleting the provisions relating to non-citizens. This rule will reinstate the one-year certification option for exchange teachers to avoid a lengthy process of certification that would defeat the exchange program.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than April 14, 1983.

5. If a person who is directly affected by the proposed rule 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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than April 14, 1983.

6. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; 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 100 persons based on 1,000 school administrators in the state of Montana.

5-3/17/83

MAR Notice No. 10-3-67

7. The authority of the agency to adopt the proposed rule is based on section 20-4-102, MCA, and the rule implements section 20-4-203, MCA.

Allen D. Gunderson.

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By Urdulau D. gym

Certified to the Secretary of State March 7, 1983.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF REPEAL OF
of rules 2.21.8101 through	)	RULES 2.21.8101 THROUGH
2.21.8105 relating to	)	2.21.8105 RELATING TO
equal employment opportunity	)	EQUAL EMPLOYMENT
data collection	)	OPPORTUNITY DATA COLLECT-
	)	ION

TO: All Interested Persons.

1. On January 27, 1983, the Department of Administration published notice of a proposed repeal of rules 2.21.8101 through 2.21.8105 relating to equal employment opportunity data collection at page 47 of the 1983 Montana Administrative Register, issue number 2.
2. The department has repealed the rules as proposed.
3. No comments or testimony were received.

By: Morris L. Brusett
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State March 7, 1983

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of Rule 10.57.102 Definitions) RULE 10.57.102 DEFINITIONS
Teacher Certification)

TO: All Interested Persons

1. On November 24, 1982, the Board of Public Education published notice of the proposed amendment of rule 10.57.102, Definitions relating to Teacher Certification, at page 2061 of the Montana Administrative Register, issue number 22.

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

In the matter of the amendments) NOTICE OF AMENDMENTS OF
of Rules 10.65.201 and 10.65.202) RULES 10.65.201 and
Kindergarten Schedule Variances) 10.65.202 KINDERGARTEN
Schedule Variances) SCHEDULE VARIANCES

TO: All Interested Persons

1. On January 27, 1983, the Board of Public Education published notice of the proposed amendments of rules 10.65.201 and 10.65.202 that relate to kindergarten schedule variances, at page 51 of the Montana Administrative Register, issue number 2.

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

Allen D. Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By

Walter Van Dyke

Certified to the Secretary of State March 7, 1983

VOLUME NO. 40

OPINION NO. 5

MOTOR VEHICLES - Punishment of owner and operator under mandatory liability insurance requirements;
MOTOR VEHICLES - Liability insurance requirements imposed on owners of motor vehicles registered and operated in Montana;
MONTANA CODE ANNOTATED - Sections 61-6-301, 61-6-302, 61-6-304.

- HELD: 1. The owner of a motor vehicle must purchase a liability policy for each vehicle he owns.
2. An individual may be cited and convicted for failure to have liability insurance if he is discovered operating a third party's uninsured motor vehicle.

18 February 1983

Jim Nugent, Esq.
Missoula City Attorney
201 West Spruce Street
Missoula, Montana 59802

Dear Mr. Nugent:

You have requested my opinion on the following questions:

1. If the owner of a motor vehicle purchases liability insurance for only one of two or more vehicles that he owns, is the liability insurance policy purchased for the one vehicle applicable to his other motor vehicles when he is operating one of them?
2. If an individual has motor vehicle liability insurance on his own vehicle(s) but is discovered operating a third party's uninsured vehicle, may the person be cited and convicted for failure to have liability insurance?

Mandatory liability insurance provisions are set forth in Title 61, chapter 6, part 3, MCA. The questions you ask raise the issue of whether liability insurance is personal and portable or whether it attaches to the car only. The scope of coverage of a liability insurance policy can only be defined by referring to the policy itself. Your questions will be answered only with reference to the statutory mandatory liability requirements.

It is well settled that in construing a statute, the intention of the Legislature controls and that intent is to be determined, if possible, from the plain meaning of the words used in the statute. State ex rel. Zander v. District Court, 181 Mont. 454, 591 P.2d 656 (1979). In addition, statutes are to be read and considered in their entirety so that all provisions may be given effect. Vita-Rich Dairy v. Department of Business Regulation, 170 Mont. 341, 553 P.2d 980 (1976).

Your first question involves the interpretation of section 61-6-302(4), MCA, due to the difference in language in the first and last sentences of that subsection. Section 61-6-302(4), MCA, provides:

Every person shall carry in a motor vehicle being operated by him an insurance card approved by the division but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of the justice of the peace, a peace officer, a highway patrolman, or a field deputy or inspector of the division. However, no person charged with violating this subsection may be convicted if he produces in court or the office of the arresting officer proof of insurance valid at the time of his arrest.

(Emphasis added.) That section must be construed in light of other provisions in the mandatory liability part. Section 61-6-301, MCA, provides: "Every owner of a motor vehicle which is registered and operated in Montana by the owner or with his permission shall continuously provide insurance against loss...." (Emphasis added.) Section 61-6-302(1), MCA, provides in relevant part, "before any applicant required to

register his motor vehicle may do so, the applicant must certify to the county treasurer that he possesses an automobile liability insurance policy, a certificate of self-insurance, or a posted indemnity bond...covering the motor vehicle." (Emphasis added.) The penalty provision, section 61-6-304, MCA, states: "It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance" or other statutorily prescribed forms of coverage. Finally, section 61-6-302(4), MCA, itself requires drivers to carry insurance cards and to exhibit those cards on demand. The clear intent of that provision is to enable law enforcement officers to ascertain at a glance whether there is a valid policy in existence covering the car being driven.

Reading these statutes together and considering their plain meaning, it is clear that every motor vehicle which is registered and operated in Montana must have liability protection. The certification to the county treasurer must be that the motor vehicle being registered is covered by a liability policy. The fact that an individual's liability policy may cover another vehicle under certain circumstances does not meet the statutory requirement that an owner "shall continuously provide insurance against loss...." § 61-6-301, MCA. (Emphasis added.) The legislative intent revealed by reading the part in its entirety is that every vehicle must have its own liability policy. Statutes must be construed to avoid absurd results, Dover Ranch v. Yellowstone County, 37 St. Rptr. 727, 609 P.2d 711 (1980), and to construe this part to require examination of each individual insurance policy in light of the circumstances surrounding the citation is to misconstrue the legislative intent.

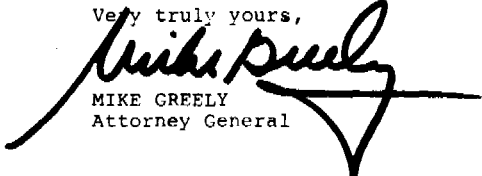
Your second question asks whether a person may be cited and convicted for driving without liability insurance when operating someone else's uninsured vehicle. That question has been answered in part by a previous Attorney General's Opinion, 38 Op. Att'y Gen. No. 49 at 169 (1979). That opinion held, in part: "Both the owner and any non-owner operator of a motor vehicle registered and operated in Montana with the owner's permission are in violation of law if the operator is not insured." Id. at 175. The statutory scheme places an affirmative duty on the owner to maintain mandatory

liability protection on any vehicle he owns. See §§ 61-6-301, 61-6-302, MCA. However, under section 61-6-304, MCA, it is also unlawful for "any person to operate" a vehicle upon Montana highways without a valid liability policy in effect. The purpose of the mandatory insurance law as articulated by the Montana Supreme Court is to protect "persons using the public highways from financially irresponsible, negligent motorists." State v. Turk, 39 St. Rptr. 584, 587, 643 P.2d 224, 227 (1982). The rationale covers both owners and operators, for it is the harm that occurs when uninsured motorists are involved in accidents, whether or not they are driving their own car, that the statute is trying to prevent.

THEREFORE, IT IS MY OPINION:

1. The owner of a motor vehicle must purchase a liability policy for each vehicle he owns.
2. An individual may be cited and convicted for failure to have liability insurance if he is discovered operating a third party's uninsured motor vehicle.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40

OPINION NO. 6

TAXATION - Definition of "nonresidential structure" as used in section 15-6-201(3), MCA;

TAXATION - Entire energy generating system only is available for exemption in section 15-6-201(3), MCA;

TAXATION - Exemptions for energy generating systems under section 15-6-201(3), MCA, determined on case by case basis;

MONTANA CODE ANNOTATED - Sections 15-6-201 and 15-32-102, MCA;

UNITED STATES CODE - 42 U.S.C. § 9202(1).

HELD: The exemption given each "nonresidential structure" in section 15-6-201(3), MCA, refers to each energy generating system, not to its individual parts.

22 February 1983

Karl Knuchel, Esq.
Deputy Park County Attorney
City/County Complex
414 East Callender
Livingston, Montana 59047

Dear Mr. Knuchel:

You have requested my opinion on the definition of "nonresidential structure" as that phrase is used in section 15-6-201(3), MCA. Section 15-6-201(3), MCA, exempts from taxation for a period of time portions of investments in nonfossil forms of energy generation, including "nonresidential structures." Your specific question is whether a "nonresidential structure" is defined to include an entire energy generating project or each individual wind-powered generator within a system.

Section 15-6-201(3), MCA, provides in relevant part:

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as

defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property....

* * *

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

Section 15-32-102(5), MCA, defines the term "recognized nonfossil forms of energy generation":

[A] system for the utilization of solar energy including passive solar systems, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources....

(Emphasis added.) The key words in the above definition are "system" and "utilization," for the legislative intention behind the passage of section 15-6-201(3), MCA, was to encourage, through tax incentives, the development of alternative energy systems utilizing such sources as wind. (See House Committee on Taxation minutes for 1/26/79.)

The words "system" and "nonresidential structure" are not defined in the taxation title. The latter phrase must be considered in light of the definition of "recognized nonfossil forms of energy generation" in order to harmonize the sections with the legislative intent. The issue, therefore, must be resolved by turning to the rules of statutory construction.

It is well settled that in construing a statute the intention of the Legislature is controlling. State Bar of Montana v. Krivec, 38 St. Rptr. 1322, 632 P.2d 707 (1981). The statute should be considered in its entirety with effect being given to all parts of the statute where possible, the result being a reasonable construction. Wynia v. City of Great Falls, 36 St. Rptr. 1589, 600 P.2d 802 (1979). The words used in the statute should be given their plain and ordinary meaning. Montana Power Co. v. Cremer, 182 Mont. 277, 596 P.2d 483 (1979).

The word "system," in its ordinary context, is defined by Webster's Dictionary as "anything formed when parts are placed together to make a regular and connected whole as of one machine." A more particular definition has been developed by Congress in its legislation supporting the development of alternative energy sources. The term "wind energy system" is defined in 42 U.S.C. § 9202(1):

[A] system of components which converts the kinetic energy of the wind into electricity or mechanical power, and which comprises all necessary components, including energy storage, power conditioning, control systems, and transmission systems, where appropriate, to provide electricity or mechanical power for individual, residential, agricultural, commercial, industrial, utility, or governmental use....

Further, the emphasis on the word "system" as it affects the term "nonresidential structure" is supported by the legislative history of section 15-6-201(3), MCA. The minutes of the committee hearings held on House Bill 299, codified as section 15-6-201, MCA, contain comments regarding the exemption referring specifically to such energy sources as "commercial systems." Thus the Legislature intended to consider alternative energy sources as systems which in their entirety would function to produce energy.

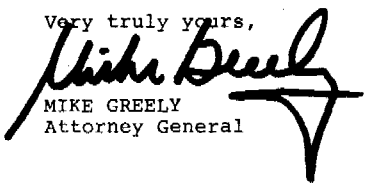
Combining the legislative purpose with the above definitions makes it clear that the term "nonresidential structure" must be read in light of the function the structure performs. A nonresidential structure may or may not comprise a system depending on whether or not the structure contains all the components necessary to generate energy. If the wind-powered generator does not, by itself, actually generate energy, including storage, control, and transmission devices, then only the system which performs the entire function is available for the exemption. If, on the other hand, an individual puts up a single structure which contains all the components which generate energy, the one structure meets the "system" definition. Each exemption, therefore, must be determined on a case by case basis. To give each structure, regardless of its role in the

energy generating system, a \$100,000 exemption is to frustrate the legislative intent.

THEREFORE, IT IS MY OPINION:

The exemption given each "nonresidential structure" in section 15-6-201(3), MCA, refers to each energy generating system, not to its individual parts.

Very truly yours,



MIKE GREELY
Attorney General

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

* * * * *

IN THE MATTER of the Petition of)	
CLARK'S BUS SERVICE, INC., Red)	DECLARATORY
Lodge, Montana, for a Declaratory)	RULING
Ruling - PSC 3091)	

* * * * *

On November 29, 1982, the Montana Public Service Commission received a request for declaratory ruling from Clark's Bus Service of Red Lodge, Montana. Clark's inquired as to whether certain charter operations are authorized by its operating authority. Opportunity to comment on the request for declaratory ruling was noticed to interested parties in the Commission's monthly notice.

Clark's holds operating authority pursuant to PSC Certificate No. 3091, the charter portion of which states as follows:

"Persons and baggage in charter service, as a Class B carrier, (1) between all points and places in Carbon County, Montana; and (2) between all points and places in Carbon County, Montana, on the one hand, and on the other hand all points and places in the state of Montana, subject to the following limitation:

LIMITATIONS: (a) the hiring of charter service must be for the entire vehicle and solicitation of individual passengers to constitute a load is prohibited; (b) the charter trip must originate or terminate in Carbon County, Montana; (c) charter service except to schools, churches, lodges or community and service organizations, is prohibited unless the one-way trip is in excess of ten (10) miles.

The charter operations in question were described by Clark's in its petition as follows:

Petitioner's operations include a charter service for Red Lodge Mountain, a ski area located 6 miles South of Red Lodge. The agreement calls for (1) transportation of skiers from Billings, Montana, to the ski area in the morning and (2) at the end of the ski day, transportation of skiers from the area to Billings, Montana. Two distinct types of people are carried: (1) individual skiers who purchase tickets from Red Lodge Mountain for the trip from Billings to Red Lodge Mountain and/or the trip from Red Lodge Mountain to Billings, (2) organized groups

who have purchased a package including transportation, lift tickets and instruction.

The above-described operations are clearly charter in nature. In each instance compensation for the transportation is received from Red Lodge Mountain Ski Resort on a flat fee basis regardless of the number of seats occupied.

To be within the limits of Clark's operating authority a charter must originate or terminate in Carbon County, Montana. The question therefore arises as to whether the charter operations in question originate or terminate in Carbon County.

The elements of a charter operation generally involve the arrangement of transportation by one entity for the benefit of a group with a common purpose other than the mere transportation itself. The group will engage in intermittent common activities and the charter will generally conclude with a final transportation leg. This being the case, it would appear that the charter operations in question both begin and end in Billings, Montana. The charter activity begins when the group gets on the bus in Billings and ends when it gets off the bus in Billings.

As the charter operations originate and terminate in Yellowstone County, they do not meet the limitation in Clark's authority that "the charter trip must originate or terminate in Carbon County, Montana. The limitation applies to the "charter trip" and not to any particular leg of the charter. Therefore, the Commission must conclude that the charter operations in question are not authorized by Clark's authority.

In issuing this ruling the Commission addresses only the charter operations described in the petition. The Commission has not considered those situations which may involve the solicitation of individual fares. Nor has the Commission attempted to interpret Clark's other certificate of authority authorizing Class B irregular route service.

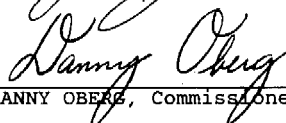
APPROVED BY THE COMMISSION February 28, 1983.


BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


THOMAS J. SCHNEIDER, Chairman


HOWARD L. ELLIS, Commissioner


CLYDE JARVIS, Commissioner


DANNY OBERG, Commissioner

ATTEST:

Madeline L. Cottrill
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

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 the 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 December 31, 1982. This table includes those rules adopted during the period January 1, 1983 through March 31, 1983, 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 December 31, 1982, 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 in the 1982 and 1983 Montana Administrative Registers.

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