

RESERVE

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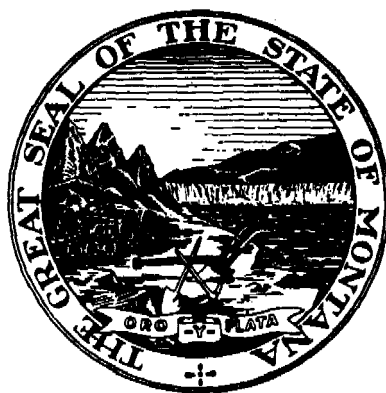
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RESERVE

STATE OF MONTANA
APR 14 1983
GOVERNMENT

MONTANA ADMINISTRATIVE REGISTER

1983 ISSUE NO. 7
APRIL 14, 1983
PAGES 287-312



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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 PUBLIC HEARING
of rules relating to) FOR THE PROPOSED ADOPTION
sexual harassment) OF RULES RELATING TO
) SEXUAL HARASSMENT

TO: All Interested Persons.

The notice of proposed agency action published in the Montana Administrative Register on March 17, 1983, is amended as follows because the required number of persons designated therein has requested a public hearing:

1. On May 10, 1983, at 9:00 a.m., a public hearing will be held in Room C-209 of the Cogswell Building to consider the adoption of rules relating to sexual harassment.

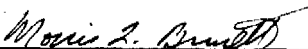
2. The rules proposed for adoption are found on page 194 of the 1983 Montana Administrative Register, issue number 5.

3. The rules are proposed for the purpose of implementing 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 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 Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620, no later than May 13, 1983.

5. Gale Kuglin, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59630, has been designated to preside over and conduct the hearing.

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


Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State April 4, 1983.

MAR Notice No. 2-2-115

7-4/14/83

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

| | |
|---------------------------------|--------------------------------|
| In the matter of the proposed) | NOTICE OF PROPOSED AMENDMENTS |
| amendments of Rules 12.8.205,) | OF RULES 12.8.205, 12.8.207, |
| 12.8.207, 12.8.209, and) | 12.8.209, and 12.8.211 -- |
| 12.8.211, concerning public) | PUBLIC USE OF RECREATIONAL |
| use of recreational areas) | AREAS |
|) |) |
|) | NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons.

1. On May 16, 1983, the Fish and Game Commission proposes to amend Rules 12.8.205, concerning camping and group use of recreational areas; 12.8.209, concerning checkout times for campers at recreational areas; and 12.8.211, concerning livestock and commercial use of recreational areas.

2. The rules as proposed to be amended provide as follows: (new matter underlined, deleted matter interlined)

12.8.205 CAMPING AND GROUP USE (1) No person may camp overnight in a department administered recreation area without obtaining a single use overnight camping permit or having permanently and properly affixed to his vehicle a seasonal camping permit or Montana state golden year's pass issued by the director or under his authority, when such area has been signed and posted as fee camping area.

(2) The basic amount of fees for single use overnight camping permits or seasonal camping permits shall be as determined by the commission and posted by the director or his duly authorized agent.

(3) No group of more than 30 persons may use a department administered recreation area except with prior permission by the director or his agent. Groups may be assessed user fees by the director or his agent as determined by the commission and may be required to surrender a deposit to defray additional or unusual department expenses caused by their use of recreation areas.

(4) No person or persons may maintain occupancy of camping facilities or space in any one designated recreation area for a period longer than 14 days during any 30-day period unless the area is otherwise posted. In areas so posted said occupancy will be limited to 7 days during any 30-day period. Such 30-day periods shall run consecutively during the year commencing with the first day each person camps in a designated recreation area each year.

(5) No person may leave a set-up camp, or trailer, camper, or other vehicle unattended for more than 48 hours unless the area is otherwise posted.

(6) No person may camp overnight in any department administered shelter building unless the shelter is posted as a camp shelter. (AUTH & IMP: 23-1-106, MCA)

12.8.207 PROPERTY DISTURBANCE (1) No person may destroy, deface, injure, remove, or otherwise damage any natural or improved property or willfully or negligently cut, destroy, or mutilate any tree, shrub, or plant, or any geological, historical, or archaeological feature, ~~but this shall not be interpreted to include~~ including flowers, berries, cones, or fallen dead wood.

(2) No person may disturb or remove the topsoil cover or permit the disturbance or removal of topsoil cover. This prohibits digging for worms, burying of garbage, and allowing pets to dig holes.

(3) Gathering or cutting firewood for off site use is prohibited without prior written approval of the director or his agent. (AUTH & IMP: Sec. 23-1-106, MCA)

12.8.209 RESTRICTED AREAS & NIGHT CLOSURES (1) No person may enter upon any portion of any area that is posted as restricted to public passage.

(2) Public recreation areas as posted will be closed nightly, except for emergency ingress and egress.

(3) Checkout time for campers using fee areas is 4:00 p.m. the following day if not posted or at such other time as posted in the area.

(4) Checkout time for users not camping overnight is sundown in areas so posted. (AUTH & IMP: Sec. 23-1-106, MCA)

12.8.211 LIVESTOCK & COMMERCIAL USE (1) No person may permit livestock to graze in any area properly fenced to restrict the passage of livestock, unless the area is specifically leased to the owner of the livestock for grazing.

(2) No person may use these lands for any commercial purpose including the posting of signs without first securing permission from the commission director or his agent.

(3) No commercial or ~~political~~ signs may be posted, without prior approval of the director or his agent.

(4) The director with approval of the commission, may adopt a schedule of fees and/or security deposits including the option of fee and/or security deposit waiver, for commercial use of department lands for a period not exceeding seven (7) days. Commercial use of department lands longer than seven (7) days requires prior approval of the commission.

(5) The director or his agent may specify the conditions and stipulations under which commercial use will be permitted on department lands. (AUTH & IMP: Sec. 23-1-106, MCA)

3. The rules are proposed to be amended to remedy ambiguities currently in the regulations.

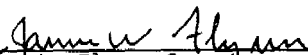
4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Stan Bradshaw, 1420 East Sixth Avenue, Helena, Montana 59620, by no later than May 15, 1983.

5. If a person who is directly affected by the proposed amendments wishes to express 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 to Stan Bradshaw at the above address by no later than May 15, 1983.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of persons who are directly affected by the proposed amendments, 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.

7. The authority of the department to make the proposed amendments is based on Section 23-1-106, MCA, and implements Section 23-1-106.



James W. Flynn, Secretary
Montana Fish and Game Commission

Certified to Secretary of State March 31, 1983

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule 16.38.302, setting fees) ON PROPOSED AMENDMENT OF
for analyses of drinking water) RULE 16.38.302
(Laboratory Fees-
Drinking Water)

TO: All Interested Persons

1. On May 20, 1983, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.38.302, which sets fees for different kinds of analyses of drinking water.

2. The proposed amendments replace present rule 16.38.302 found in the Administrative Rules of Montana. The proposed amendments would raise or lower most of the present fees, add fees for some analyses not now listed, and delete the provision requiring analyses to be performed free for a physician, dentist, or health officer.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.38.302 LABORATORY FEES -- DRINKING WATER Fees for analysis of drinking water by the department of health and environmental sciences are as follows:

(1) The fee for a standard microbiological (total coliform) analysis is \$6.

(2) The fee for a fecal coliform analysis is \$10.

(3) The fee for a plate count is \$20.25.

(4) ~~(2)~~ The fee for a complete inorganic chemical analysis, consisting of an analysis for arsenic, barium, cadmium, chromium, lead, mercury, nitrate, selenium, silver, fluoride, calcium, sodium, pH, and total alkalinity, is \$98.

(5) ~~(3)~~ The fee for a nitrate analysis is \$10 \$8.60.

(6) ~~(4)~~ The fee for a pesticide-herbicide analysis, consisting of an analysis for endrin, lindane, methoxychlor, toxaphene, 2,4-D, and 2,4,5-TP Silvex, is \$222 \$209.80.

(7) ~~(5)~~ The fee for a total trihalomethane analysis is \$273- as follows:

(a) one analysis, 4 sites: \$262.10

(b) one analysis, 1 site: \$87.40

(8) ~~(6)~~ The fees per analysis to determine the concentration of individual constituents are as follows:

| <u>Analysis</u> | <u>Cost per Analysis</u> |
|-----------------|--------------------------|
| Acidity | \$ 24.50 |
| Alkalinity | 10.50 12.50 |
| Aluminum | 8.50 4.10 |
| Ammonia | 10.05 8.60 |
| Antimony | 44.70 4.10 |

| | | |
|-----------------------------------|--------|-------|
| Arsenic | 10.50 | 10.90 |
| Barium | 8.50 | 4.10 |
| Beryllium | 44.70 | 4.10 |
| Biochemical Oxygen Demand (BOD) | 55.10 | 58.20 |
| Boron | 17.50 | 4.10 |
| Cadmium | 3.90 | 4.10 |
| Calcium | 4.10 | |
| Chloride | 11.40 | 13.60 |
| Chromium | 3.90 | 4.10 |
| Chromium Hexavalent | 74.40 | 78.30 |
| Cobalt | 44.70 | 4.10 |
| Chemical Oxygen Demand (COD) | 45.30 | 47.80 |
| Color (2 tests - pH adjusted) | 46.05 | 48.60 |
| Copper | 3.90 | 4.10 |
| Cyanide | 212.20 | 62.50 |
| Fluoride | 13.65 | 14.40 |
| Iron | 3.90 | 4.10 |
| Lead | 3.90 | 4.10 |
| Lithium | 44.70 | 4.10 |
| Magnesium | 4.10 | |
| Manganese | 3.90 | 4.10 |
| Mercury | 7.95 | 8.30 |
| Mercury Digestion | 54.75 | 56.70 |
| Metals Concentration (per sample) | 2.30 | 2.40 |
| Metals Digestion (except Mercury) | 13.65 | 9.20 |
| Metals scan | 3.00 | |
| Molybdenum | 44.70 | 4.10 |
| Nickel | 44.70 | 4.10 |
| Nitrate | 8.60 | |
| Nitrogen Kjeldahl | 23.25 | 20.00 |
| Oil and Grease | 31.60 | 33.20 |
| Ortho-Phosphorus | 7.10 | 6.10 |
| pH | 1.40 | 1.50 |
| Phenols | 80.65 | 85.20 |
| Total-Phosphorus | 11.80 | 10.20 |
| Potassium | 4.10 | |
| Selenium | 10.50 | 10.90 |
| Silica | 44.70 | 4.10 |
| Silver | 5.25 | 4.10 |
| Sodium | 4.10 | |
| Specific Conductance | 1.90 | 2.00 |
| Strontium | 44.70 | 4.10 |
| Sulfate | 10.95 | 9.40 |
| Sulfide | 84.65 | 88.90 |
| Tin | 44.70 | 4.10 |
| Total Suspended Solids | 14.80 | 15.50 |
| Turbidity | 4.70 | 4.90 |
| Vanadium | 44.70 | 4.10 |
| Zinc | 3.90 | 4.10 |

| | | |
|---|--------|--------|
| Pesticides (Lindane, Endrin, Toxaphene, Methoxychlor) - first analysis per sample | 75.20 | 72.10 |
| each additional analysis per sample | 11.40 | 6.60 |
| Herbicides (2,4-D, Silvex) - first analysis per sample | 109.00 | 104.80 |
| each additional analysis per sample | 13.65 | 13.10 |
| Total organic carbons (TOC) | | 15.70 |
| Total organic halogens (TOX) | | 12.70 |

(9) (7) The fees specified in subsections (1) through (6) (8) of this rule may be lowered by the department of health and environmental sciences when larger batches of samples warrant lower fees.


(8) When a laboratory analysis of drinking water is requested by a physician or dentist licensed pursuant to the laws of Montana or a health officer appointed pursuant to the laws of Montana, the analysis will be performed free of charge by the department of health and environmental sciences.

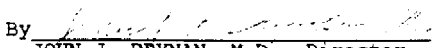
4. The Board is proposing these amendments to the rule because they are necessary to reflect changes in the cost factors relevant to each test. In some cases the fees are increased, largely due to elevated personnel, materials, and rent costs. In other cases, fees have been lowered, largely due to methodology changes resulting in decreased cost, and in some instances because personnel are partially paid from other sources. The free laboratory analyses for physicians, dentists, and health officers need to be eliminated because there is no longer any alternate funding source to cover their cost.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than May 19, 1983.

6. Robert L. Solomon, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendments is based on section 75-6-103, MCA, and the rule implements section 75-6-103, MCA.


JOHN F. MCGREGOR, M.D., Chairman

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

Certified to the Secretary of State April 4, 1983

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PROPOSED AMEND-
ment of Rule 32.3.2001) MENT OF RULE 32.3.2001
BRANDS AND EARMARKS) BRANDS AND EARMARKS

NO PUBLIC HEARING
CONTEMPLATED


TO: All Interested Persons

1. On May 14, 1983, the Board of Livestock proposes to amend rule no. 32.3.2001 which specifies certain livestock brands and earmarks which are to be used only by an official representative of the Montana Department of Livestock, Animal Health Division.

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

32.3.2001 BRANDS AND EARMARKS

(1) (a) (i) through (vi) remain the same.

(1) (a) (vii) "S" on right or left side of neck or 
(spade mark) on right or left side of jaw designated desig-
nates officially spayed heifers.

(1) (a) (viii) through end of rule remain the same.

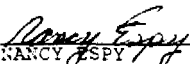
3. The rationale for the amendment is to be consistent with most other western states using this recommended brand.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Dr. James W. Glosser, Administrator & State Veterinarian, Department of Livestock, Animal Health Division, Capitol Station, Helena, MT 59620, no later than May 12, 1983.

5. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to James W. Glosser, D.V.M., Administrator & State Veterinarian, no later than May 12, 1983.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority to make the proposed amendment is based on section 81-2-102 MCA and implements the same.



NANCY ESPY
Chairman, Board of Livestock

By: 

JAMES W. GLOSSE
Administrator & State Veterinarian

Certified to the Secretary of State April 4, 1963

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

| | | |
|------------------------------|---|---------------------------|
| In the matter of the amend- |) | NOTICE OF PROPOSED AMEND- |
| ment of Rule 32.15.601 FEES |) | ment of rule 32.15.601 |
| FOR FILING NOTICES REGARDING |) | FEES FOR FILING NOTICES |
| SECURITY AGREEMENTS, raising |) | REGARDING SECURITY AGREE- |
| the required fee. |) | MENTS |

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On May 14, 1983 the Board of Livestock proposes to amend rule no. 32.15.601 which specifies the required fee for filing a security agreement. The amendment would raise the fee from \$10 to \$15.

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

32.15.601 FEES FOR FILING NOTICES REGARDING SECURITY AGREEMENTS Every person filing notice of a security agreement, assignment, renewal or satisfaction pursuant to section 81-8-301 must pay a fee of ~~\$10.00~~ \$15.00 for each brand listed. The fee shall be paid by check or money order may payable to the department of livestock. No filing with the department may be processed without the fee first being paid.

3. The rationale for the amendment is to allow recoupment of actual department costs up to \$15 as is allowed by 81-8-304 M.C.A.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Les Graham, Administrator, Brands-Enforcement Division, Capitol Station, Helena, MT 59620, no later than May 12, 1983.

5. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Administrator, no later than May 12, 1983.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having no less than 25 directly affected members, a hearing will be

held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority to make the proposed amendment is based on section 81-8-304 MCA and implements the same.

Nancy Espy
NANCY ESPY
Chairman, Board of Livestock

By: Les Graham
LES GRAHAM, Administrator
Brands-Enforcement Division

Certified to the Secretary of State April 4, 1983.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the ADOPTION) NOTICE OF PROPOSED ADOPT-
OF RULES I - III specifying:) TION OF RULES CONCERNING
the manner of recording and) LIVESTOCK BRANDS
transferring livestock brands)
and of selling branded live-)
stock)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On May 14, 1983 the Board of Livestock proposes to adopt rules specifying the manner in which a livestock brand may be recorded; the manner in which a brand may be transferred; and the manner in which livestock bearing a brand may be sold.

2. The proposed rules provide as follows:

RULE I - Brand Ownership and Transfer

(1) Brand ownership is valid only if the owner's name is recorded in the department.

(2) Names may be recorded in the following manner only: "x and y", or "x or y".

(3) A brand may be transferred only if the signatures of all recorded owners or their assignees appear on the transfer.

(4) If possible, when recording a brand, the ownership interest should be identified (i.e., joint tenancy with right of survivorship, tenancy in common, etc.)

AUTH: Sec. 81-1-102 M.C.A.; IMP Sec. 81-1-102, 81-3-102, 81-3-103 M.C.A.

RULE II - Sale of Branded Livestock

(1) Except as provided in (3), ownership of livestock bearing a brand recorded in "x and y" may be transferred only if the transfer bears the signatures of all recorded owners or their assigns.

(2) Except as provided in (3), ownership of livestock bearing a brand recorded in "x or y" may be transferred if the transfer bears the signature of one recorded owner or his assigns.

(3) Recorded owner(s) of a brand may designate on the records of the department any person(s) who may transfer livestock bearing the brand of the recorded owner(s). Such designations are valid only if signed by all recorded owners of the brand at the time of the designation.

AUTH: Sec. 81-1-102 M.C.A.; IMP Sec. 81-1-102, 81-3-105 M.C.A.

RULE III - Change in Brand Recording

If the department has begun processing a recording of a brand, any changes proposed in the original recording will be considered a new recording and a recording fee will be charged.

AUTH: Sec. 81-1-102 M.C.A.; IMP Sec. 81-1-102, 81-3-107 M.C.A.

3. The rules are proposed to be adopted to replace present department policy which, although identical to the above, does not provide an adequate enforcement capability and has proven in the past to be confusing because of its limited availability to livestock owners.

4. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to Les Graham, Administrator, Brands-Enforcement Division, Capitol Station, Helena, MT 59620, no later than May 12, 1983.

5. If a person who is directly affected by the proposed rules wishes to express his data, view, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Administrator, no later than May 12, 1983.

5. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having no less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority to make the proposed adoptions is based on section 81-1-102 and implements 81-1-102, 81-3-103, 81-3-105, and 81-3-107.

Nancy Espy
NANCY ESPY
Chairman, Board of Livestock

By: Les Graham
LES GRAHAM, Administrator
Brands-Enforcement Division

Certified to the Secretary of State April 4, 1983.

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

In the matter of the adoption) NOTICE OF ADOPTION OF AN
of an amendment to a federal) AMENDMENT TO A FEDERAL
agency rule pertaining to the) AGENCY RULE INCORPORATED BY
food stamp program, Rule) REFERENCE IN RULE 46.11.101,
46.11.101) FOOD STAMP PROGRAM. NO
) PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 276 published in 48 Fed. Reg. 6836, Tuesday, February 15, 1983. 7 CFR 272, 273 and 276 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program.

The amendments provide for several food stamp program changes that are aimed at deterring food stamp program abuse and improving recovery of overpayments. These amendments implement the provisions of the Omnibus Budget Reconciliation Act of 1981 that relate to the disqualification penalties for intentional program violation. The basis for disqualification is expanded to include the intentional making of false or misleading statements, misrepresentations, or the concealment or withholding of facts, as well as the commission of any act that constitutes a violation of any state food stamp statute. Furthermore, mandatory disqualification periods of six months for the first abuse, twelve months for the second, and permanently for the third offense will be imposed against any individual found to have committed an intentional program violation. In addition, these amendments implement the following provisions of the Reconciliation Act regarding the improved recovery of overpayments. First, the household of the disqualified individual, rather than the household member guilty of an intentional program violation, is held responsible for repaying the resultant overissuance and must agree to repayment in cash or to a reduction in its allotment. Second, in cases not the result of program violation or state agency error, state agencies are required to collect overissuances from those persons still participating in the program by reducing further allotments. Finally, these amendments implement provisions of the Food Stamp Amendment of 1982 (Pub.L. 97-253) which allow the state agencies to collect any type of overissuance by using means other than allotment reduction or cash repayment. A copy of 7 CFR 272, 273 and 276 published in 48 Fed. Reg. 6836, Tuesday, February 15, 1983, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.


7-4/14/83

MAR Notice No. 46-2-366

2. The effective date for the adoption of the later amendment is April 15, 1983. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment April 1, 1983.

3. If the department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5,253 persons based on 52,530 food stamp recipients.

4. The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 4, 1983.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF THE REPEAL OF
of rules 20.11.101 through) RULES 20.11.101 THROUGH
20.11.107 and the adoption) 20.11.107 AND ADOPTION OF
of new rules concerning) NEW RULES
reimbursement policies))
) (Reimbursement Policies)

TO: All Interested Persons

1. On January 13, 1983, the Department of Institutions published notice of the proposed repeal of rules 20.11.101 through 20.11.107 concerning reimbursement policies and the proposed adoption of new rules concerning this matter at page 1 of the 1983 Montana Administrative Register, issue number 1.

2. The Department has repealed rules 20.11.101 through 20.11.107, found on pages 20-153 through 20-156 of the Administrative Rules of Montana.

3. The Department has adopted the new rules with minor modification following the receipt of oral comments from Greg Petesch, Staff Attorney for the Legislative Council, on behalf of the Legislative Interim Code Committee. No written comments were received.

Mr. Petesch's comments were in regard to Rule VIII (20.11.115). He indicated that the adoption by reference to the Montana Rules of Civil Procedure and the Montana Rules of Evidence may be inappropriate since the statutes do not grant clear rule making authority for reimbursement appeals as contested cases. Also, in the history of Rule VIII (20.11.115) the statutes that the rule implements should include Section 53-1-408 MCA. The Department agrees with these oral comments and will adopt Rule VIII (20.11.115) with the following changes:

In (3) line 9 after discovery, add "if agreed to by the parties to the appeal" will be...

In (3) line 20 after Montana Rules of Evidence, insert "if agreed to by the parties to the appeal."

In the history notes of Rule VIII (20.11.115), Section 53-1-408 MCA, will be included as a statute that the rule implements.

4. The new rule numbers have been assigned as 20.11.108 through 20.11.118.

CARROLL V. SOUTH, Director
Department of Institutions

BY: 

Certified to the Secretary of State April 4, 1983.

VOLUME NO. 40

OPINION NO. 7

LOCAL GOVERNMENT - Imposition of property lien in favor of municipality to secure unpaid water charges is not authorized under Montana law;

MUNICIPAL UTILITIES - Imposition of property lien in favor of municipality to secure unpaid water charges is not authorized under Montana law;

MONTANA CODE ANNOTATED - Sections 69-7-201 and 7-13-4306.

Held: Under existing Montana law, a city or town may not file a lien against a landowner's property due to the tenant's failure to pay for water service contracted for and used by the tenant. Discontinuance of service is the only remedy available for nonpayment of water charges. §§ 69-7-201, 7-13-4306, MCA.

18 March 1983

Kenneth R. Olson
Town Counsel
Dutton, Montana 59433

Dear Mr. Olson:

You have requested my opinion on the following question:

Can a city or town file a lien against a landowner's property due to the tenant's failure to pay for water service contracted for and used by the tenant?

Prior to the 1981 legislative session, the rates and operating procedures of municipal utilities were regulated by the Montana Public Service Commission. In 1981, the Legislature returned to the municipalities the power and authority to regulate rates and charges imposed for municipal utility service. This authority has certain restrictions set forth in section 69-7-101, MCA. In addition, municipal utilities were given broad authority to adopt rules governing their operation. Such rules must contain, at a minimum, those

requirements of good practice which can be normally expected for the operation of a utility. § 69-7-201, MCA. In other words, the adopted rules, including those governing the collection of delinquent utility charges, must be reasonable. Section 69-7-201, MCA, also provides that the rules adopted by municipalities shall outline the utility's procedure for discontinuance of service.

A municipality is authorized to discontinue water supply to premises for nonpayment of either water or sewer charges. § 7-13-4306, MCA. The provisions of Title 7, MCA, apply to the actions of municipal utilities. See § 69-3-101(5), MCA. An additional remedy for delinquent sewer charges is provided by section 7-13-4309, MCA, which authorizes that unpaid sewer charges be inserted as a tax against the lot or parcel of real estate to which the service has been furnished. No similar provision exists for collection of delinquent water charges.

The Montana Supreme Court has not determined the legality of a property lien for nonpayment of water charges by a tenant. Therefore, it is appropriate to look to court decisions from other jurisdictions for guidance.

The United States Supreme Court has upheld, against constitutional objections, the imposition of liens against property of a landlord for unpaid water bills of a tenant. Dunbar v. New York, 251 U.S. 516, 40 S. Ct. 250 (1920). In that case the city charter, adopted by the New York General Assembly, provided that charges for water become liens on the property. 1901 New York Laws, ch. 466. The court indicated that the lien did not deprive the owner of property without due process since the property benefited from the water service. The fact that it is the tenant who defaults does not relieve the property from liability as it would be unfit for human habitation without water. Id. at 518.

In the absence of a statute expressly making arrearages for water rents a lien on property, or authorizing a lien procedure, the [municipality] has no right to compel an owner to pay charges incurred by another. Friedman v. Dist. of Columbia, 172 A.2d 562, 563 (D.C. 1961). Water rents do not constitute a lien on the

property supplied unless it is so provided by statute in express terms or by necessary implication. Id. at 563.

Thus, in light of Dunbar and Friedman, the validity of statutorily authorized liens against property to secure delinquent utility charges incurred by a tenant is unquestioned. The only issue is whether the consequence of failing to pay water charges is limited in Montana to the statutory remedy provided by section 7-13-4306, MCA, or whether the 1981 enactment of section 69-7-201, MCA, expanded the authority of municipalities in the area of utility charge arrearages beyond the remedy of discontinuing service. Section 69-7-201, MCA, does not expressly provide a lien to secure payment of water charges. The specific reference in section 69-7-201, MCA, to the adoption of procedures for discontinuing service and the retention of section 7-13-4306, MCA, authorizing discontinuance for nonpayment of charges, support a conclusion that a lien upon property was not contemplated by the Legislature as an available remedy for nonpayment of water bills.

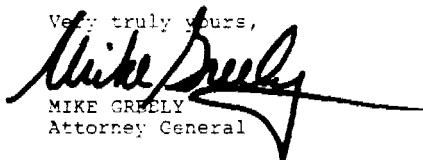
Municipal utilities are now only partially regulated under sections 69-7-101 to 69-7-201, MCA. However, the rules adopted for their operation must be in accord with existing law. No general grant of power to municipalities can authorize bylaws which conflict with state statutes. McGillic v. Corby, 37 Mont. 249, 253, 95 P. 1063, 1064 (1908). In this case, the pertinent state laws are sections 69-7-201 and 7-13-4306, MCA, authorizing discontinuance of service for nonpayment of water charges. It is a familiar rule of construction that, when a power is conferred upon a municipality, and the mode in which it is to exercise that power is prescribed, such mode must be pursued. McGillic v. Corby, 37 Mont. 249, 255, 95 P. 1063, 1065 (1908).

THEREFORE, IT IS MY OPINION:

Under existing Montana law, a city or town may not file a lien against a landowner's property due to the tenant's failure to pay for water service contracted for and used by the tenant. Discontinuance of service is the only remedy

available for nonpayment of water charges.
§§7-13-4306, 69-7-201, MCA.

Very truly yours,

A handwritten signature in black ink that reads "Mike Greely". The signature is stylized with a large, sweeping flourish that extends to the right and then loops back down and left, crossing over the printed name below it.

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 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.

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