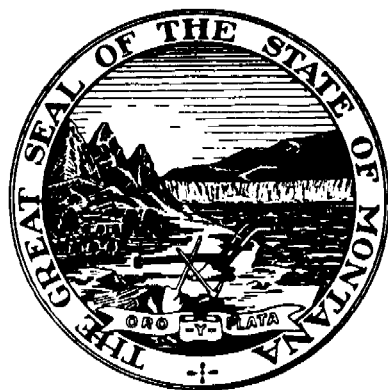


RESERVE

# **MONTANA ADMINISTRATIVE REGISTER**

# **DOES NOT CIRCULATE**

1984 ISSUE NO. 10  
MAY 31, 1984  
PAGES 858-904



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the	)	NOTICE OF PROPOSED
repeal of all rules found	)	REPEAL OF ALL RULES
in ARM Title 2, Chapter 23,	)	FOUND IN ARM TITLE 2,
relating to the operation	)	CHAPTER 23, RELATING
of a Merit System	)	TO THE OPERATION OF
	)	A MERIT SYSTEM

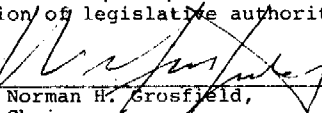
TO: All Interested Persons.

1. On July 1, 1984, the Merit System Council will repeal all rules found in Title 2, Chapter 23, Administrative Rules of Montana, relating to the administration of a Merit System.

2. The rules to be repealed are on pages 2129 through 2435 of the Administrative Rules of Montana.

3. The Council proposes to repeal these rules based on a finding by the District Court in the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, that the statute on which the Council relies for its authority, 2-18-105, MCA, is a nullity as an unconstitutional delegation of legislative authority.

By:

  
Norman H. Grosfield,  
Chairman,  
Merit System Council

Certified to the Secretary of State May 21, 1984

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the proposed ) NOTICE OF PROPOSED ADOPTION  
adoption by reference of a new ) BY REFERENCE OF RULES FOR  
rule implementing the Montana ) THE IMPLEMENTATION OF THE  
environmental policy act ) MONTANA ENVIRONMENTAL POLICY  
 ) ACT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 30, 1984, the Department of Commerce proposes to adopt by reference, procedural rules to implement the Montana Environmental Policy act of "MEPA" (sections 75-1-101, et seq., MCA).

2. The proposed adoption provides as follows:

"1. INCORPORATION BY REFERENCE OF RULES FOR IMPLEMENTING MEPA. (1) The department of commerce herein adopts and incorporates by this reference the administrative procedures promulgated by the department of health and environmental sciences (DHES) at ARM 16.2.601 through 16.2.619, except 16.2.603 (6) and references thereto; 16.2.701 through 16.2.704 (1); and 16.2.705 for the implementation of the Montana Environmental Policy Act.

(2) For purposes of this adoption the terms "department of health and environmental sciences" and "department" as they appear in the DHES rules cited in (1), above, mean the department of commerce and boards attached to it.

(3) The rules incorporated by reference in (1), above, relate to the preparation and distribution of preliminary environmental reviews and environmental impact statements concerning major actions of state government significantly affecting the quality of the human environment. The rules also establish a fee structure to defray the cost of the preparation of environmental impact statements as authorized by law.

(4) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Community Development Division, Capitol Station, Helena, Montana 59620."

Auth: 2-4-201, 307, 75-1-202, MCA Imp: 75-1-201, 202, MCA

3. The rule is proposed to establish procedures for the preparation and distribution of preliminary environmental reviews and environmental impact statements and to establish fees for the preparation of certain environmental impact statements. The rules referred to in the proposed rule have previously been adopted in standardized form by a number of executive branch agencies.

4. Interested persons may submit their data, views or arguments concerning the proposed rule in writing to the Department of Commerce, Community Development Division, 1424 9th Avenue, Helena, Montana, 59620, no later than June 28, 1984.

5. If a person who is directly affected by the proposed rule 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 comments he has to the Department of Commerce, Community Development Division, 1424 9th Avenue, Helena, Montana, 59620, no later than June 28, 1984.

6. If the board receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed rule, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no 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 in excess of 25 based on the total population of the state.

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 21, 1984.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF COSMETOLOGISTS

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendments of 8.14.814 con-	)	ON THE PROPOSED AMENDMENTS
cerning fees for cosmetolo-	)	OF 8.14.814 FEES. GENERAL,
gists and amendment of 8.14.	)	INITIAL, RENEWAL AND LATE
1010 concerning fees for	)	RENEWAL FEES and 8.14.1010
electrologists	)	FEE SCHEDULE

TO: All Interested Persons.

The notice of proposed amendments published in the Montana Administrative Register on April 12, 1984, issue number 7, is amended as follows because the required number of persons designated therein have requested a public hearing:

1. On June 27, 1984, at 9:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 Roberts, Helena, Montana to consider the amendments of the above-stated rules.

2. The amendments are the same as proposed in the original notice.

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

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Board of Cosmetologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 28, 1984.

5. Brinton Markle, Helena, Montana has been designated to preside over and conduct the hearing.

6. The authority of the board to make the proposed rule amendments is based on sections 37-1-134, 37-31-203, and 37-32-201, MCA, and the rules implement 37-1-134, 37-31-302, 303, 304, 306, 307, 312, 321, 323, 37-32-305, MCA.

BOARD OF COSMETOLOGISTS  
JUNE BAKER, PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 21, 1984.



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of new rules under	)	THE PROPOSED ADOPTION OF NEW
sub-chapter 7 governing the	)	RULES GOVERNING THE MUNICIPAL
municipal finance consolidation	)	FINANCE CONSOLIDATION ACT
act program	)	PROGRAM

TO: All Interested Persons:

1. On June 21, 1984 at 10:00 a.m. a public hearing will be held in room 104, State Capitol Building, Helena, Montana, to consider the adoption of new rules under sub-chapter 7 governing the municipal finance consolidation act program.

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

3. The proposed rules provide as follows:

"I. DEFINITIONS (1) The definitions contained herein are supplemental to the definitions contained in ARM 8.97.301 and shall govern with respect to Sub-chapter 7 in the event of conflict.

(2) As used in Sub-Chapter 7, and unless the context clearly requires another meaning:

(a) 'bond anticipation note' means a note issued by a local government unit pursuant to 17-5-1609, MCA.

(b) 'local government unit' means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, or other taxing district.

(c) 'obligation' means any bond, note or bond anticipation note issued by a local government unit and payable from taxes, special assessments, revenues derived from an enterprise owned by the local government unit, or any combination thereof.

(d) 'reserve fund' means the municipal finance consolidation act reserve fund created in 17-5-1630, MCA."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

"II. SCOPE OF SUB-CHAPTER 7 (1) This sub-chapter shall govern the submittal of and processing of applications to the board for financing and the purchase of obligations under the municipal finance consolidation act of 1983."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

"III. DESCRIPTION OF MUNICIPAL FINANCE CONSOLIDATION ACT PROGRAM (1) The board is authorized to purchase, hold and sell obligations of local government units. In order to finance the program, the board is authorized to issue its bonds and notes. Bonds or notes issued by the board are payable out of any revenues, assets, or money of the board,

subject only to agreements with the holders of particular bonds or notes pledging particular revenues, assets or money."

Auth: 17-5-1605, MCA Imp: 17-5-1602, 1606, 1611, MCA

"IV. BONDING LIMIT (1) The total amount of outstanding bonds and notes issued by the board in connection with the program may not exceed \$25,000,000.

(2) The board may not purchase obligations of any single local government unit in an amount greater than \$500,000 for a single bond issue or note."

Auth: 17-5-1605, MCA Imp: 17-5-1608, MCA

"V. CRITERIA FOR EVALUATION OF APPLICATIONS (1) In evaluating applications for financing under the program, the board shall consider the following factors:

(a) the lawfulness and validity of the purpose to be considered by the financing;

(b) the ability of the local government unit to secure borrowed money from other sources and the costs thereof;

(c) the ability of the local government unit to pay principal of and interest on its obligations when due; and

(d) the priority of need for the particular public improvement or purpose to be financed.

(2) The board may vary the terms and conditions of its purchases of obligations as between various local government units in accordance with their respective priorities and credit worthiness."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

"VI. APPLICATION PROCEDURE (1) A local government unit may apply for financing under the municipal finance consolidation act program by submitting an application to the administrator on a form provided by the board. The application shall contain:

(a) a complete description of the purpose or purposes for which the obligations are to be issued;

(b) evidence that the local government unit has taken all steps necessary for the authorization and issuance of the obligations, including the holding of any required election or public hearings;

(c) a description of all outstanding obligations of the local government unit;

(d) a description of the proposed issue of obligations including principal amount, proposed maturities and any interest rate limitations;

(e) if the obligations are to be made payable from the revenues of an enterprise, a copy of the most recent audit of the enterprise, certified by an independent certified public accountant; and

(f) if the obligations consist of special improvement district bonds or rural special improvement district bonds, a

description of the character of the property to be assessed and the nature of the ownership thereof.

(2) The administrator shall review the application to determine whether the application is complete under rule VI (1). The administrator may, in his discretion, request the local government unit to provide additional information relevant to the evaluation of the application under rule V.

(a) When the administrator determines that the application is complete, he shall transmit the application, together with any additional information submitted to him, to the board for its review together with his recommendation for action.

(3) The board may require additional information from a local government unit before acting on an application. If it approves the application, the board shall direct the administrator to notify the local government unit and shall decide the nature of the agreement to be entered into with the local government unit under rule VII."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

"VII. AGREEMENTS Upon approval of an application, the board will enter into one of the following agreements with the local government unit:

(1) The board may enter into an agreement with the local government unit for the immediate purchase of obligations of the local government unit upon terms set by the board.

(2) The board may enter into an agreement with the local government unit wherein the board will agree that it will purchase obligations of the local government unit, in an amount not to exceed a principal amount approved by the board, upon the issuance by the board of its obligations. In such event, the agreement with the local government unit shall provide that the terms of the obligations will be negotiated at the time of purchase in accordance with rules VIII, IX, and XI.

(3) The board may enter into an agreement with the local government unit for the immediate purchase of bond anticipation notes to be issued by the local government unit. In such event, the agreement shall require the local government unit to issue and sell its obligations at or prior to the maturity of the bond anticipation notes in an amount sufficient to retire the bond anticipation notes with interest. Upon entering into such an agreement, the board and the local government unit may also enter into an agreement for the future purchase of obligations of the local government unit pursuant to rule VII (2)."

Auth: 17-5-1605, MCA Imp: 17-5-1609, 1611, 1643, MCA

"VIII. TERMS, INTEREST RATES (1) The terms of obligations shall be established by the board at the time of purchase.

(2) The board may require a local government unit to pay interest on its obligations at a rate or rates sufficient to enable the board to pay debt service on any bonds or notes issued by the board, to reimburse the board for its administrative costs incurred in undertaking the program and its general operative and administrative expenses and to provide a reasonable allowance for losses that may be incurred in the program, including funding the reserve fund."

Auth: 17-5-1605, MCA Imp: 17-5-1611, 1643, MCA

"IX. RESERVE FUND (1) The board is required to establish the reserve fund. All money held in the reserve fund shall be used solely for the payment of the principal of or interest on bonds or notes issued by the board and secured in whole or in part by the reserve fund, or the purchase or redemption of such bonds or notes.

(2) Upon purchase of any obligations, the board may require that the local government unit deposit a specified sum in the reserve fund. Any amount so deposited in the reserve fund may be retained by the board after the obligations are retired or any bonds or notes issued by the board are retired."

Auth: 17-5-1605, MCA Imp: 17-5-1611, 1630, MCA

"X. CLOSING REQUIREMENTS (1) At the closing of the purchase of an issue of obligations, the local government unit shall provide the board:

(a) a complete transcript of all proceedings taken by the local government unit in connection with the authorization, issuance and sale of the obligations, certified by the recording officer of the local government unit;

(b) certificates of the chief executive officer and recording officer of the local government unit as to the absence of litigation and the application to be made of the proceeds of the obligations;

(c) a certification evidencing compliance with section 103 (c) of the Internal Revenue Code of 1954, as amended, relating to arbitrage bonds;

(d) a legal opinion of an attorney selected by the local government unit and acceptable to the board as to the validity of the obligations, the security thereof and the exemption of the interest to be paid thereon from federal income taxation; and

(e) such other items as may be requested by the board or its counsel."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

"XI. CHARGES (1) A local government unit shall submit a non-refundable application fee of \$500 with an application.

(2) The costs of the issuance of any bonds or notes by the board, including, but not limited to, underwriters

discount, fees and charges of bond counsel and financial advisors, and the cost of advertising, printing, executing and delivering the bonds or notes, may be financed with the proceeds of the bonds or notes, may be recovered by the board through the interest rate borne by obligations in accordance with rule VIII (2), or may be allocated among local government units participating in the program and charged to them directly."

Auth: 17-5-1605, MCA Imp: 17-5-1611, 1643, MCA

"XII. SPECIAL IMPROVEMENT DISTRICT AND RURAL SPECIAL IMPROVEMENT DISTRICT BONDS With respect to the purchase by the board of any special improvement district bonds under Title 7, Chapter 12, parts 41 and 42, MCA, or rural special improvement district bonds under Title 7, Chapter 12, part 21, MCA, the agreement with the local government unit shall require the following:

(1) The local government unit shall establish a revolving fund and shall maintain it in the maximum amount permitted by law.

(2) The obligations to be purchased by the board shall be secured by the revolving fund.

(3) The proceedings under which the obligations are issued shall contain a covenant on the part of the local government unit that any deficiency in the collection of the principal or any assessment pledged to the payment of the obligations shall be regarded as a deficiency in the bond fund for the obligations for which the local government unit shall make an immediate draw on the revolving fund.

(4) The local government unit shall covenant that, at any time that the revolving fund is less than the maximum amount permitted by law, whether as a result of a transfer to a bond fund or otherwise, it shall levy an ad valorem tax in the maximum amount permitted by law to replenish the revolving fund.

(5) The local government unit shall report to the board, not less than annually, with respect to the collections of assessments pledged to the payment of the obligations, the amount and nature of any delinquencies, and the balance on hand in the revolving fund and the bond fund for the obligations. The local government unit shall provide the board, upon request, any additional information requested by the board relating to the obligations, the collections of assessments or taxes, the enforcement of any remedies or delinquencies, or any other items which the board determines are germane to the security for the payment of the obligations."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

4. The board has proposed these rules to commence implementation of the Montana Economic Development Board's municipal finance consolidation act program.

Rule I. is proposed to provide definitions of terms that are used throughout the Sub-Chapter and to give certain terms a specific meaning so that the board, lenders and potential borrowers under the program understand the terms and to avoid confusion occasioned by different definitions of the terms appearing elsewhere.

Rule II. is proposed to define the scope of application of the proposed rules and to establish that applications for financing and the purchase of obligations for the board's municipal finance consolidation act program shall be processed under these rules rather than under rules adopted by the board for its other programs.

Rule III. is proposed to describe the basic elements and requirements of and limitations on the board's municipal finance consolidation act program and to acquaint local government units with how the board's municipal finance consolidation act program will operate.

Rule IV. is proposed to describe the total maximum amounts of bonds authorized to be issued by the board in connection with the program and to describe the maximum size of obligation the board may purchase. The rule also will apprise local government units that there is a maximum size of obligation that may be purchased by the board and that there are limitations as to the total amount of bonds which may be issued by the board.

Rule V. is proposed to set forth in one section the various requirements that each project must meet in order to be eligible for financing under the program and to establish the criteria to be used by the board in evaluating which financings are eligible for the program and which financings may be purchased by the board.

Rule VI. is proposed to specify the information that must be contained in the application form and to establish the various steps involved in the processing of an application for financing under this program. The rule also will apprise local government units of the steps they must take in order to participate in the program.

Rule VII. describes the three alternative methods by which the board may agree to purchase the obligation of a local government unit. Without this regulation, it would be unclear as to when and under what conditions the board will purchase the local government unit's obligations.

Rule VIII. is proposed to specify that the board has the authority to determine the term of the obligations it purchases from the local government units at the time of purchase and to enumerate the cost elements the board may consider in establishing the interest rate on that obligation.

Rule IX. is proposed to describe the reserve fund, the purpose therefor and to authorize the board to require the local government unit to make a contribution thereto as a condition to the purchase of the local government unit's obligation. This rule identifies as an additional source of money for the reserve fund contributions from the local government unit pursuant to section 17-5-1630, MCA.

Rule X. is proposed to specify for local government units' participating in the program, the documents that must be provided to the board in order to complete the financing. The act creating the program does not specify what documentation will be required, thus the rule is necessary to notify the local government units of the board's requirement.

Rule XI. is proposed to establish the various fees and charges to be paid by an applicant for a financing undertaken by the board under the bond program. The board is authorized to collect reasonable fees and charges for making financing available under this program.

Rule XII. is proposed to establish special provisions with respect to special improvement district bonds which may be offered to the board for purchase. Because special improvement district bonds pose risks to bond holders that may be different from other types of bonds, the board deems it necessary to establish special conditions that must be satisfied in order for the board to purchase these types of bonds.

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 Montana Economic Development Board, 1424 9th Avenue, Helena, Montana 59620, no later than June 30, 1984.

6. The board or its designee will preside over and conduct the hearing.

MONTANA ECONOMIC DEVELOPMENT  
BOARD  
PAT McKITTRICK, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 21, 1984.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENTS  
amendments of ARM 8.97.301 con- ) OF ARM 8.97.301 DEFINITIONS  
cerning definitions and 8.97. ) and 8.97.402 CRITERIA FOR  
402 concerning the criteria for ) DETERMINING ELIGIBILITY  
determining eligibility )  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 30, 1984, the Montana Economic Development Board proposes to amend the above-stated rules.

2. The proposed amendment of 8.97.301 will add a new subsection to be numbered (h). The current subsection (h) will become (i) and all following subsections will be renumbered. The amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3469 through 8-3471, Administrative Rules of Montana)

"8.97.301 DEFINITIONS (1)...

(a)...

(h) 'classified loan' means a loan which has been reviewed by a state or federal supervisory agency and determined to be an undue and unwarranted credit risk and classified as substandard, doubtful, a loss, or in some other equivalent category.

(h) (i) ..."

Auth: 17-6-324, MCA Imp: 17-6-302, MCA

3. The amendment is proposed to provide a specific meaning to the term "classified loan".

4. The proposed amendment of 8.97.402 will add a new subsection (9) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3488 and 8-3489, Administrative Rules of Montana)

"8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY (1) ...

(9) No loan shall be offered to the board for financing if the borrower on whose behalf the loan would be submitted as a signator to a loan, including the loan being contemplated for financing, appears in the most recent examination report of the financial institution as a classified asset or loan. At the time an application for financing is submitted the financial institution submitting the application shall certify that the loan for which financing is sought has not been classified and that it does not have a loan currently outstanding for the same borrower that is a classified loan.

Auth: 17-6-324, MCA Imp: 17-6-303, MCA



5. The addition is proposed to provide the board sufficient information to make sound investments in businesses. If a business loan has been classified by a state or federal regulatory agency, the board should not purchase such loan because of the greater risk associated with such loan.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than June 28, 1984.

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 comments he has to the Montana Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than June 28, 1984.

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 no 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.

MONTANA ECONOMIC DEVELOPMENT  
BOARD

PAT MCKITTRICK, CHAIRMAN

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 21, 1984.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PROPOSED AMEND-
of Rule 10.55.302 Certificates )	MENT OF RULE 10.55.302
	CERTIFICATES.
	NO PUBLIC HEARING
	CONTEMPLATED.

TO: All Interested Persons

1. On June 30, 1984 the Board of Public Education proposes to amend rule 10.55.302(2) certificates.
2. The rule as proposed to be amended provides as follows:

10.55.302 CERTIFICATES (1) remains the same.  
(2) All personnel coaching intramural or interscholastic athletics shall ~~have successfully completed a course in first aid~~ hold a current Red Cross first aid certificate.  
(3) through (5) remains the same.

AUTH: Sec. 20-2-121, MCA IMP: 20-7-101, MCA

3. This amendment is proposed to provide for up-to-date first aid training for all personnel coaching athletics.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than June 28, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ted Hazelbaker, Chairman of the Board of Public Education, 33 Last Chance Gulch, Helena, Montana 59620, no later than June 28, 1984.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 200 persons based on 2,000 coaches in Montana.

7. The authority of the Board to make the proposed amendment is based on section 20-2-121, MCA, and the rule implements section 20-7-101, MCA.

10-5/31/84

MAR Notice No. 10-3-79

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: *Walter Van Dyke*

Certified to the Secretary of State May 17, 1984

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

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of rules 16.38.301 and 16.38.302,	)	FOR ADOPTION
and the adoption of RULES I and II,	)	AND AMENDMENT
setting forth fees for laboratory	)	OF RULES
analyses by the department's	)	
laboratory	)	(Laboratory Fees)

TO: All Interested Persons

1. On July 13, 1984, at 8:30 a.m., a joint public hearing by the board and department will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.38.301 and 16.38.302, and the adoption of new RULES I and II. These rules set forth fees which are charged by the department's chemical laboratory for the performance of laboratory analyses.

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

16.38.301 LABORATORY FEES -- AIR (1) Fees for air quality analyses are as follows:

<u>Type of analysis</u>	<u>Cost</u>
Total suspended particulate (TSP),	\$ <del>3-80</del> 3.50 per
hi-vol sampler	filter
TSP, dichotomous sampler	<del>3-70</del> 3.40 per
	filter
Sulfate in hi-vol filter	<del>11-40</del> 11.30 per
	filter
Nitrate in hi-vol filter	<del>11-40</del> 11.30 per
	filter
Trace metals-one metal	10.10 per filter
Trace metals-each additional metal	4.10 per filter
Fluoride: Paper	<del>31-30</del> 30.20
Fluoride: Plate	<del>15-70</del> 15.20 per
	plate
Fluoride: Vegetation	<del>54-00</del> 52.20
Sulfur and BTU in coal	<del>167-70</del> 167.90
Sulphation rate	<del>12-50</del> 11.50 per
	plate

AUTHORITY: Sec. 50-1-202 MCA

IMPLEMENTING: Sec. 50-1-202 MCA

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) 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-~~ \$95.20.

(5) The fee for a nitrate analysis is ~~\$8.60-~~ \$8.50.

(6) 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 ~~\$209.00-~~ \$204.90.

(7) The fee for a total trihalomethane analysis is as follows:

(a) one analysis, 4 sites: ~~\$262.10~~ \$256.40

(b) one analysis, 1 site: ~~\$87.40~~ \$85.10

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

Analysis	Cost per Analysis
Acidity	<del>\$ 24.50</del> <u>23.70</u>
Alkalinity	<del>12.50</del> <u>12.60</u>
Aluminum	4.10
Ammonia	<del>8.60</del> <u>8.50</u>
Antimony	4.10
Arsenic	10.90
Barium	4.10
Beryllium	4.10
Biochemical Oxygen Demand (BOD)	<del>58.20</del> <u>56.20</u>
Boron	4.10
Cadmium	4.10
Calcium	4.10
Chloride	<del>13.60</del> <u>13.70</u>
Chromium	4.10
Chromium Hexavalent	<del>78.30</del> <u>75.70</u>
Cobalt	4.10
Chemical Oxygen Demand (COD)	<del>47.80</del> <u>46.20</u>
Color (2 tests - pH adjusted)	<del>48.60</del> <u>47.00</u>
Copper	4.10
Cyanide	<del>62.50</del> <u>60.40</u>
Fluoride	<del>14.40</del> <u>13.90</u>
Iron	4.10
Lead	4.10
Lithium	4.10
Magnesium	4.10
Manganese	4.10
Mercury	8.30
Mercury Digestion	<del>56.70</del> <u>56.80</u>
Metals Concentration (per sample)	2.40
Metals Digestion (except Mercury)	9.20
Metals scan	3.00
Molybdenum	4.10
Nickel	4.10
Nitrate	<del>8.60</del> <u>8.50</u>
Nitrogen Kjeldahl	<del>20.00</del> <u>19.70</u>

Oil and Grease	<del>33.20</del>	32.10
Ortho-Phosphorus	<del>6.10</del>	6.00
PCB	70.50	
PCP	<u>102.50</u>	
Petroleum	70.50	
pH	<del>1.50</del>	1.40
Phenols	<del>85.20</del>	82.30
Total-Phosphorus	<del>10.20</del>	<u>10.10</u>
Potassium	4.10	
Presumptive cyanide	7.00	
Purgable organic	85.10	
Selenium	10.90	
Silica	4.10	
Silver	4.10	
Sodium	4.10	
Specific Conductance	2.00	
Strontium	4.10	
Sulfate	9.40	9.30
Sulfide	<del>88.90</del>	<u>85.90</u>
Tin	4.10	
Total Suspended Solids	<del>15.50</del>	14.30
Turbidity	<del>4.90</del>	<u>4.50</u>
Vanadium	4.10	
Zinc	4.10	

Pesticides (Lindane, Endrin, Toxaphene, Methoxychlor) - first analysis per sample	<del>72.10</del>	70.50
each additional analysis per sample	6.60	6.40
Herbicides (2,4-D, Silvex) - first analysis per sample	<del>104.00</del>	102.50
each additional analysis per sample	<del>13.10</del>	12.70
Total organic carbons (TOC)	<del>15.70</del>	15.80
Total organic halogens (TOX)	<del>12.70</del>	12.80

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

AUTHORITY: Sec. 75-6-103 MCA

IMPLEMENTING: Sec. 75-6-103 MCA

RULE 1 LABORATORY FEES -- SOLID WASTE AND HAZARDOUS WASTE Fees for solid and hazardous waste analyses are as follows:

Type of analysis	Cost
EP Toxicity, metals only	\$63.10
Ignitability	25.20
Vegetable Digestion	6.00

AUTHORITY: Sec. 50-1-202 MCA

IMPLEMENTING: Sec. 50-1-202 MCA

RULE 11 LABORATORY FEES -- OCCUPATIONAL HEALTH Fees for occupational health analyses are as follows:

<u>Type of analysis</u>	<u>Cost</u>
Blood Lead	\$22.00
Cholinesterase	1.50
Formaldehyde	11.60

AUTHORITY: Sec. 50-1-202 MCA

IMPLEMENTING: Sec. 50-1-202 MCA

3. Sections 50-1-202 and 75-5-103, MCA, authorize the department and board to adopt rules establishing a schedule of fees for laboratory analyses performed by the department's laboratories. The law requires that these fees reflect actual costs to the department. These amendments and new rules are being proposed to reflect recent changes in the department's costs resulting from changes in personnel, indirect costs and rent for fiscal year 1985.

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 Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana no later than July 12, 1984.

5. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, has been designated to preside over and conduct the hearing.


6. The authority of the department to make the proposed rules is based on section 50-1-202(18), MCA, and the rules implement section 50-1-202(18), MCA.

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

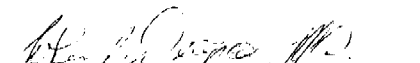
FOR THE BOARD:

  
JOHN F. MCGREGOR, M.D., Chairman

By

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

FOR THE DEPARTMENT:

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 21, 1984

BEFORE THE BOARD OF OIL AND GAS CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF PROPOSED
of a permanent rule requiring )	ADOPTION OF A RULE
burning of waste gas and )	REQUIRING BURNING OF
workable ignitor systems on )	WASTE GAS AND IGNITOR
wells producing H <sub>2</sub> S gas. )	SYSTEMS ON WELLS
	PRODUCING HYDROGEN
	SULFIDE GAS

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons.

1. On July 2, 1984 the Board of Oil and Gas Conservation (Board) proposes to adopt a rule requiring workable ignitor systems on wells producing H<sub>2</sub>S gas and requiring that all gas vented to the atmosphere at a rate exceeding 20 MCF per day shall be burned.

2. The proposed rule replaces an emergency rule adopted February 6, 1984 which was published in the Montana Administrative Register, issue number 3, at page 324.

The text of the proposed rule is as follows:

NEW RULE I (36.22.1221) BURNING OF WASTE GAS REQUIRED

(1) All gas vented to the atmosphere at a rate exceeding 20 MCF per day shall be burned. All operators of wells venting any quantity of gas containing 20 parts per million or more of H<sub>2</sub>S shall insure that workable ignitor systems are installed on such wells and take whatever other steps that may be necessary to insure that all such waste gas is burned and not vented to the atmosphere. All operators shall insure that tank vapors are kept to a minimum. A vapor recovery system may be required. No variance from this rule is allowed without written authorization of the Board.

(2) Any operator seeking a variance from this rule must submit a production test and a statement justifying the need for a variance. The statement should include such information as potential human exposure; relative isolation of location; restriction of access to location such as fence, warning signs, etc.; low gas volume; and low ETU content.

(3) The Board staff will review the justification statement with the Board at its next regularly scheduled hearing. The Board may elect to grant or deny the application or schedule a hearing thereon. An operator whose application for variance is denied without a hearing may request a hearing.



3. The Board finds that several producing wells in this state are producing hydrogen sulfide in potentially lethal quantities. Unless those wells are equipped with a workable ignitor system to insure that said lethal gas is continually burned, their existence poses an imminent peril to the public health and safety. The Board also finds that a number of producing wells in this state are also venting explosive gas which, if not burned, could pose a danger to the public health and safety.

4. Interested parties may submit their data, views, or arguments concerning the proposed rule to Dee Rickman, P. O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than June 28, 1984.

5. If a person who is directly affected by the proposed rule wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Dee Rickman, P. O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than June 28, 1984.

6. If the Board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons 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. Ten percent of those persons directly affected has been determined to be at least 25 persons based on the Board's determination that there are more than 250 persons who either operate oil wells potentially subject to this rule or who reside near such wells.

7. The authority of the Board to adopt said rule is based on Section 82-11-111, MCA, and the rule implements Section 82-11-123, MCA.

Richard A. Campbell  
Richard A. Campbell, Chairman  
Board of Oil and Gas Conservation

BY: Dee Rickman  
Dee Rickman,  
Assistant Administrator  
Oil and Gas Conservation Division

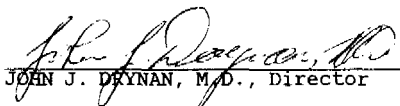
Certified to the Secretary of State May 24, 1984

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

In the matter of the	)	NOTICE OF AMENDMENT
amendment of rule 16.32.373	)	OF RULE
concerning minimum standards	)	16.32.373
for licensure of hospice	)	
programs	)	(Hospice Programs)

TO: All Interested Persons

1. On April 12, 1984, the department published notice of a proposed amendment of rule 16.32.373 concerning minimum standards for licensure of hospice programs at page 570 of the 1984 Montana Administrative Register, issue number 7.
2. The department has amended the rule as proposed.
3. No comments or testimony were received.

  
JOHN J. DRYNAN, M.D., Director

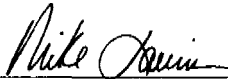
Certified to the Secretary of State May 21, 1984

BEFORE THE BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF AMENDMENTS OF
amendments of Rule 23.14.401,	)	RULE 23.14.401 ADMINISTRA-
Rule 23.14.402 and Rule	)	TION OF PEACE OFFICER
23.14.403	)	STANDARDS AND TRAINING,
	)	RULE 23.14.402 MINIMUM STAN-
	)	DARDS FOR THE EMPLOYMENT OF
	)	PEACE OFFICERS, AND RULE
	)	23.14.403 REQUIREMENTS FOR
	)	PEACE OFFICERS HIRED BEFORE
	)	AND AFTER THE EFFECTIVE DATE
	)	OF THIS REGULATION

TO: All Interested Persons:

1. On April 12, 1984, the Board of Crime Control published notice of proposed amendments to rule 23.14.401, rule 23.14.402 and rule 23.14.403 to conform with the legislative statute defining peace officers regulated under the POST program.
2. The agency has amended the rules as proposed.
3. No comments were received.

  
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Administrator

Certified to the Secretary of State May 18, 1984

BEFORE THE BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF AMENDMENTS OF
amendments of Rule 23.14.412,	)	RULE 23.14.412 QUALIFICA-
Rule 23.14.413, repeal of	)	TIONS FOR CERTIFICATION
Rule 23.14.414 and new Rule	)	OF ACADEMY AND TRAINING
23.14.419	)	COURSES, RULE 23.14.413
	)	CERTIFICATION REQUIREMENTS
	)	FOR TRAINEE ATTENDANCE AND
	)	PERFORMANCE, REPEAL OF RULE
	)	23.14.414 QUALIFICATIONS FOR
	)	INSTRUCTORS AND ADOPTIONS OF
	)	RULE 23.14.419 CERTIFICA-
	)	TION OF INSTRUCTORS

TO: All Interested Persons:

1. On April 12, 1984, the Board of Crime Control published notice of proposed amendments to rule 23.14.412, concerning certification of the Montana law enforcement academy and training courses, and rule 23.14.413, concerning requirements for trainees attendance and performance; proposed repeal of rule 23.14.414, concerning qualifications of instructors; and proposed new rule 23.14.419, concerning certification requirements for instructors.

2. The agency has amended, repealed and adopted the rules as proposed.

3. No comments or testimony were received.



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Administrator

Certified to the Secretary of State May 18, 1984

BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE AMENDMENT )	
OF ARM 36.12.102 AND ARM )	NOTICE OF THE ADOPTION OF
36.12.103 PERTAINING TO REVISED )	AMENDMENTS OF ARM 36.12.102
FORMS AND NEW APPLICATION FEES )	FORMS AND ARM 36.12.103
FOR VARIOUS WATER-RELATED )	APPLICATION AND SPECIAL FEES
APPLICATIONS )	

\* \* \* \* \*

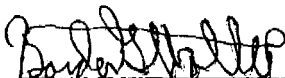
TO: All Interested Persons

1. On March 29, 1984, the Board of Natural Resources and Conservation published notice of proposed amendment of ARM 36.12.102 and ARM 36.12.103 pertaining to revised forms and new application fees for various water-related applications, at pages 494-498 of the Montana Administrative Register, 1984 Issue Number 6.

2. No public hearing was contemplated and no request for a public hearing was received. Public comments were accepted until April 30, 1984. No public comments were received.

3. The Board of Natural Resources and Conservation adopted amended ARM 36.12.102 and ARM 36.12.103 on May 11, 1984.

4. The authority of the Board of Natural Resources and Conservation to make the amendments is based on Section 85-2-113, MCA.



Gordon Holte, Chairman  
Board of Natural Resources  
and Conservation  
32 South Ewing, Helena, MT 59620

Certified to the Secretary of State May 21, 1984.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF THE AMENDMENT  
amendment of rule 1.2.217 ) OF RULE 1.2.217  
Rule History Notes ) RULE HISTORY NOTES

TO: All Interested Persons.

1. On April 12, 1984, the Secretary of State published notice of a proposed amendment to rule 1.2.217 at page 586 of the 1984 Montana Administrative Register, issue number 7.

2. The Secretary of State has amended the rule with the following changes:

1.2.217 RULE HISTORY NOTES

(1) through (6) same as proposed.

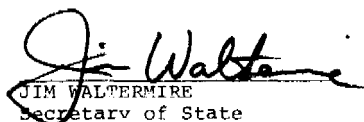
(a) The statement must be inserted in the history note of any rule newly adopted, or amended, after October 1, 1983. It must also be ~~inserted~~ included in the notice ~~of adoption~~ section of the register at the time ~~the~~ a rule or rule amendment is proposed for adoption.

(b) same as proposed.

Example same as proposed.

3. Comments were received stating the proposed amendment was unclear as to when the statement needed to appear in the register. The Secretary of State has clarified at what state in the rulemaking process the statement must be included in the Montana Administrative Register.

4. The authority for the rule is 2-4-306 MCA, and the rule implements sections 2-4-306, and 2-4-308, MCA.

  
JIM WALTERMIRE  
Secretary of State

Dated this 17th day of May 1984.

VOLUME NO. 40

OPINION NO. 51

COUNTIES - Modification of statutorily established speed limits;  
COUNTY COMMISSIONERS - Authority to enact ordinances;  
COUNTY COMMISSIONERS - Modification of statutorily established speed limits;  
ORDINANCES - Authority of board of county commissioners to enact ordinances;  
TRAFFIC - Modification of statutorily established speed limits by board of county commissioners;  
MONTANA CODE ANNOTATED - Sections 7-3-401, 7-3-414, 7-3-417, 7-3-431, 7-3-442, 7-5-109, 61-1-306, 61-8-103, 61-8-303, 61-8-310, 61-8-711, 61-12-101;  
MONTANA CONSTITUTION - Article XI, § 4.

HELD: A board of county commissioners, constituted in a commission form of government, may alter otherwise statutorily established speed limits by compliance with section 61-8-310, MCA. It may further adopt traffic ordinances to the extent permitted under section 61-12-101(14), MCA, and any such ordinances may include penalty provisions.

8 May 1984

Jack Yardley, Esq.  
Deputy Park County Attorney  
Park County Courthouse  
Livingston MT 59047

Dear Mr. Yardley:

You have requested my opinion concerning a question which I have phrased as follows:

May a board of county commissioners put speed restrictions on certain county roads and impose a penalty for violation thereof?

The involved board of county commissioners is constituted in a commission form of government, as defined in section 7-3-401, MCA.

Montana Administrative Register

10-5/31/84

Sections 61-8-103 and 61-12-101, MCA, establish the general scope of the power of "local authorities" to enact and enforce ordinances, rules or regulations concerning traffic matters. The term "local authorities" is defined in section 61-1-306, MCA, and includes boards of county commissioners. Section 61-8-103, MCA, states:

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

Section 61-12-101, MCA, amplifies section 61-8-103, MCA, and expressly provides that local authorities may, "with respect to streets and highways under their jurisdiction and within the reasonable exercise of police power," regulate various aspects of traffic control, including "altering the speed limits as authorized herein" (§ 61-12-101(10), MCA), and "enacting as ordinances any and all provisions of chapter 8 or chapter 9 [Of Title 61], and any and all other laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction." § 61-12-101(14), MCA (emphasis added).

Section 61-8-303, MCA, contains the basic speed restrictions for urban districts, highways under construction or repair and all other locations. However, section 61-8-310, MCA, in part grants local authorities the power to alter speed limits under specified circumstances:

(1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local



authority may set a reasonable and safe limit thereon which:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime; or

(c) decreases the limit outside an urban district, but not to less than 35 miles per hour.

(2) A local authority in its jurisdiction shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under 61-8-303 for an urban district.

A speed limit adopted in accordance with the above becomes effective "when appropriate signs giving notice of the altered limit are erected upon the highway." § 61-8-310(3), MCA. Only federal-aid highways or their extensions are excepted from operation of section 61-8-310, MCA. See § 61-8-310(4), MCA. Once a local authority complies with section 61-8-310, MCA, in modifying and posting the altered limit, violation of that limit constitutes violation of section 61-8-303, MCA. The penalty for such violation is specified in section 61-8-711, MCA.

As stated above, section 61-12-101(14), MCA, permits local authorities to adopt by ordinance substantive portions of the motor vehicle statute. Section 61-12-101(14), MCA, was enacted during the 1959 legislative session, and the title of that act read:

An Act to Amend Section 32-2131, Revised Codes of Montana, 1947, Relating to the Jurisdiction of Municipalities Over Violations Occurring Within the Limits of Municipalities, Allowing the Municipalities to Adopt as Ordinances All Acts Not in Conflict With State Law, Repealing All Acts in Conflict Herewith and Providing That This Act Be Effective From and After its Passage and Approval. [Emphasis added.]

The Legislature thus used the term "ordinance" with the intent of granting only those entities, which then possessed legislative or ordinance-enacting authority, the power to adopt provisions of the motor vehicle statute. See generally Board of County Commissioners v. Lamoreaux, 168 Mont. 102, 105, 540 P.2d 975, 976-77 (1975) (title of Act may be examined to determine legislative intent). Counties had, in contrast, traditionally been held as possessing administrative powers but not legislative authority. See Hersey v. Neilson, 47 Mont. 132, 143-44, 131 P. 30, 32 (1913); State ex rel. City of Missoula v. Holmes, 100 Mont. 256, 274, 47 P.2d 624, 628-29 (1935); see also Bacus v. Lake County, 138 Mont. 69, 78-79, 354 P.2d 1056, 1061 (1960); Plath v. Hi-Ball Contractors, 139 Mont. 263, 268-69, 362 P.2d 1021, 1023-24 (1961).

The 1972 Montana Constitutional Convention, however, adopted substantial changes in permissible local government structures and powers. See Mont. Const. art. XI, §§ 1-6; see generally Tipco Corporation v. City of Billings, 39 St. Rptr. 600, 603, 642 P.2d 1074, 1077 (1982); Stevens v. City of Missoula, 40 St. Rptr. 1267, 1270-71, 667 P.2d 440, 443-44 (1983). Article XI, § 4(1)(b) of the Montana Constitution specifically provides that general government power counties have "legislative, administrative, and such other powers as provided or implied by law," and Mont. Const. art. XI, § 4(2) requires the powers of counties to be liberally construed. The Local Government Committee report to the Constitutional Convention, accompanying its proposed amendments, explained the reasoning behind the provisions eventually incorporated without material change into article XI, § 4(1)(b):

Through stringent court interpretations... Montana counties have been denied the local legislative, or ordinance-making powers possessed by cities and towns.

....

The Local Government Committee is well aware of contentions that counties should not exercise any legislative power because the traditional county structure does not allow for clear separation of the legislative and executive functions and thus does not provide

for clear separation of powers. However, the committee believes the legislature can build safeguards into any grant of legislative powers to counties to guard against such alleged abuse of the separation of powers concept. The language of section 4, subsection 2 clearly hinges the grant of legislative powers to counties on grants from the legislature; no broad grant of power is given directly to counties by this section.

The committee's overriding concern is that Montana counties, through the officials elected locally, be allowed to meet the increasing challenges of a rapidly changing state. Allowing the legislature to give counties legislative power will provide another tool in coping with the urban sprawl outside incorporated municipalities and in eliminating some of the present reasons feeding the growth of overlapping governmental jurisdictions and special districts.

II Montana Constitutional Convention at 793-94. It is, therefore, indisputable that article XI, section 4(1)(b) was designed to eliminate any constitutional bar to the grant of legislative, or ordinance-enacting, authority to counties possessing only general governmental powers.

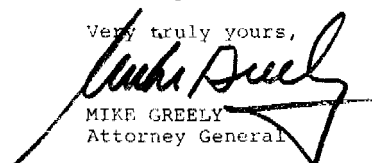
As required by article XI, section 4 of the 1972 Montana Constitution, the Legislature significantly restructured the permissible range of local government structures following the constitutional convention. Sections 7-3-401 to 444, MCA, govern the commission form of government. Section 7-3-401, MCA, states that "[a]ll legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission," while other sections relating to the commission form of government explicitly recognize the authority of the commission to adopt ordinances to determine various aspects of county governments. (Emphasis added.) See §§ 7-3-414 and 7-3-417; 7-3-431 to 442, MCA. While the commission form of government is available to municipalities and counties, no statutory distinction is drawn between the nature of the underlying political subdivision and its authority.

I conclude, on the basis of Mont. Const. art. XI, § 4 and subsequent legislative action, that counties constituted in the commission form of government have legislative, or ordinance-enacting, authority as to those matters committed to their governmental discretion by the Legislature. Because the term "local authorities," as defined in section 61-1-306, MCA, and used in section 61-12-101, MCA, includes counties and because counties constituted in a commission form of government have ordinance-enacting power as to matters over which the Legislature has given them legislative authority, such counties may adopt through ordinance all or a portion of chapters 8 and 9 of Title 61 pursuant to section 61-12-101(14), MCA. They may further impose penalties for violation of any provisions so adopted. Your inquiry did not indicate whether the board wishes to modify the penalties imposed under section 61-8-711, MCA, for speeding violations, and I do not determine whether modification of the statutory penalty would render that portion of the ordinance in conflict with section 61-8-711, MCA. See, e.g., City of Toledo v. Best, 172 Ohio St. 371, 176 N.E.2d 520, 522 (1961); Township of Chester v. Panicucci, 62 N.J. 94, 299 A.2d 385, 390 (1972); Village of Mount Prospect v. Malouf, 103 Ill. App. 2d 88, 243 N.E.2d 434, 436 (1968); Kalita v. City of Detroit, 57 Mich. App. 696, 226 N.W.2d 699, 703 (1975); City of Aurora v. Martin, 181 Colo. 72, 507 P.2d 868, 870 (1973); see generally E. McQuillan, The Law of Municipal Corporations § 17.15 (3d ed. 1981). I would, however, note that section 7-5-109, MCA, imposes a limit on penalties assessable under ordinances; that limit is consistent with the maximum ordinance penalty permitted under section 61-8-711(2), MCA.

THEREFORE, IT IS MY OPINION:

A board of county commissioners, constituted in a commission form of government, may alter otherwise statutorily established speed limits by compliance with section 61-8-310, MCA. It may further adopt traffic ordinances to the extent permitted under section 61-12-101(14), MCA, and any such ordinances may include penalty provisions.

Very truly yours,

  
MIKE GREELY  
Attorney General

10-5/31/84

Montana Administrative Register

VOLUME NO. 40

OPINION NO. 52

COUNTY ATTORNEYS - Not eligible to participate in state group health insurance plan;  
COUNTY OFFICERS AND EMPLOYEES - County attorney is an elected county official;  
INSURANCE - County attorneys not eligible for state group health insurance plan;  
MONTANA CODE ANNOTATED - Title 2, chapter 15; Title 2, chapter 18, part 7; Title 2, chapter 18, part 8; sections 2-18-601, 2-18-701, 2-18-712(1), 2-18-702(2), 2-18-809(3), 2-18-809(4), 7-4-2203(1)(a), 7-4-2502(2)(a), 7-4-2701 to 7-4-2717;  
MONTANA CONSTITUTION - Article VI, section 1;  
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Atty Gen. No. 32 (1975);  
REVISED CODES OF MONTANA 1947 - Section 11-1024.

HELD: County attorneys are not eligible to participate in the State of Montana group health insurance plan.

11 May 1984

Nick Murnion, Esq.  
Garfield County Attorney  
P.O. Box 33  
Jordan MT 59337

Dear Mr. Murnion:

You requested an opinion concerning:

Whether county attorneys are eligible for the State of Montana group health insurance plan.

This plan is set forth in part 8 of Title 2, chapter 18, MCA, entitled "State Group Insurance." Part 8 authorizes the State to establish a program to provide group health insurance to "officers and employees of the state." § 2-18-809(4), MCA. The question is whether county attorneys are "officers" or "employees" of the state for purposes of part 8. "State employee" as defined in part 8 expressly excludes county and local government employees. § 2-18-809(3), MCA. Part 8 does not define state "officer."

Montana Administrative Register

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Part 7 of Title 2, chapter 18, entitled "Group Insurance Generally," addresses group insurance for all public employees and officers. Section 2-18-702(2), MCA, provides:

State employees and elected officials, as defined in 2-18-701, may participate in such state employee group benefit plans as are provided for under part 8 of this chapter.

Section 2-18-701, MCA, defines officers and employees of state government:

Definitions. In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

(1) a permanent full-time employee defined in 2-18-601;

(2) a part-time permanent employee, as defined in 2-18-601, who is scheduled to work a regular schedule of 20 hours or more a week;

....

(4) elected officials;"

.... [Emphasis added.]

County attorneys do not come under subsections (1) and (2) of this statute because section 2-18-601, MCA, expressly excludes elected officials from the definition of "employee." Moreover, county attorneys are not "scheduled to work a regular schedule of 20 hours or more a week" for the state, as "part-time permanent employees" under subsection (2). It is my opinion that county attorneys do not come under subsection (4) because they are elected county officials, not state officials.

Furthermore, "elected officials" in subsection (4) could not reasonably be construed to include county and local officials because subsection (1) expressly excludes those officials. Such construction would make subsection (1) meaningless. If there is doubt about the meaning of a phrase in a statute, the statute is to be considered in its entirety and the phrase must be given a reasonable construction which will enable it to be harmonized with the entire statute. McClanathan v. Smith, 186 Mont. 56, 606 P.2d 507 (1980).

A county attorney is defined by statute as a county officer. § 7-4-2203(1)(a), MCA. State officers are specifically designated in the Montana Constitution and the statutes. See, e.g., Mont. Const. art VI, § 1; Title 2, ch. 15, MCA. The county attorney is not included as a state officer. County attorneys are elected on a county-wide basis, and their legal responsibilities are restricted to the confines of their individual counties. The amount of a county attorney's salary depends on the population of his county. §§ 7-4-2701 to 2717, MCA.

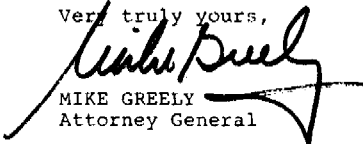
I recognize that the county attorney's salary is paid by the state and the county. § 7-4-2502(2)(a), MCA. The sharing of the salary by the state and county is justified because of the dual function of the county attorney: he represents his county in all legal matters (§ 7-4-2711, MCA), and he represents the State in the prosecution of all public offenses that occur within his county (§ 7-4-2716, MCA). A 1975 attorney general's opinion concluded that a county attorney is jointly employed by the county and the state for social security purposes. 36 Op. Att'y Gen. No. 32 (1975).

However, it is my opinion that for the purposes of participation in group health insurance programs, the Legislature intended to exclude county attorneys from the state group insurance plan. The legislative history supports this conclusion. Before 1979 a single statute authorized all state and local bodies to enter into group health insurance programs. § 11-1024, R.C.M. 1947. In 1979 the Legislature responded to the need to deal with the large number of state employees, placing the responsibility with the Department of Administration to design, supervise and administer group benefit plans for all state employees. Consequently, separate statutory provisions were enacted for state government and for all other governmental bodies. Thus, section 2-18-702(1), MCA, provides for "[a]ll counties, cities, towns, school districts, and the board of regents" to enter into group plans "upon approval of two-thirds vote of their respective officers and employees." (Emphasis added.) Section 2-18-702(2), MCA, authorizes state employees and officials to proceed under the state group insurance provisions. It is clear that the Legislature intended all county employees and officers to proceed under subsection (1), not under the state group insurance plan.

THEREFORE, IT IS MY OPINION:

County attorneys are not eligible to participate in  
the State of Montana group health insurance plan.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mike Greely", with a large, sweeping flourish extending from the end of the signature.

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend 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

Definitions: Administrative Rules of Montana (ARM) is a looseleaf 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      | 1. Consult ARM topical index, volume 16. |
| Subject    | Update the rule by checking the          |
| Matter     | accumulative table and the table of      |
|            | contents in the last Montana             |
|            | Administrative Register issued.          |
| Statute    | 2. Go to cross reference table at end of |
| Number and | each title which lists MCA section       |
| Department | numbers and corresponding ARM rule       |
|            | numbers.                                 |

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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 March 31, 1984. This table includes those rules adopted during the period April 1, 1984 through June 30, 1984, 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 March 31, 1984, 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 1983 and 1984 Montana Administrative Registers.

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