MONTANA ADMINISTRATIVE REGISTER

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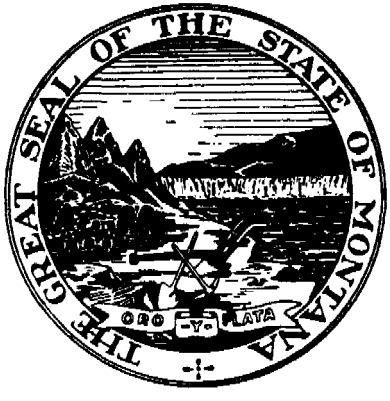

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the amendment of rules 4.14.302 concerning loan powers and eligible loan activities, 4.14.303 concerning loan maximums, 4.14.305 concerning applicant eligibility and 4.14.601 concerning tax deduction.	)	NOTICE OF PROPOSED AMENDMENT OF ARM 4.14.302 LOAN POWERS AND ELIGIBLE LOAN ACTIVITIES, 4.14.303 LOAN MAXIMUMS, 4.14.305 APPLICANT ELIGIBILITY AND 4.14.601 TAX DEDUCTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 30, 1984, the Montana Agricultural Loan Authority proposes to amend rules 4.14.302 concerning loan powers and eligible loan activities, 4.14.303 concerning loan maximums, 4.14.305 concerning applicant eligibility and 4.14.601 concerning tax deduction.

2. The proposed amendment of 4.14.302 will read as follows: (new matter underlined, deleted matter interlined)

"4.14.302 Loan Powers and Eligible Loan Activities

(1)...

(2) Eligible loan activities consist of financing purchases of the following:

(a) ...

(c) Agricultural land - the Authority will finance the purchase of land in Montana suitable for farming/ranching and which is or will be operated for farming/ranching purposes by an individual beginning farmer/rancher who will be the principal user of such land and who will materially and substantially participate in the operation and management of the farm/ranch. Purchase of land for speculative purposes is ineligible for loan under this program.

(d) ..."

3. The change is being proposed to comply with revised federal law pertaining to the issuance of private purpose, tax exempt industrial development revenue bonds. The authority of the Montana Agricultural Loan Authority to make the proposed change is based on section 80-12-103, MCA, and the rule implements section 80-12-201, MCA.

4. The proposed amendment of 4.14.303 will read as follows: (new matter underlined, deleted matter interlined)

"4.14.303 Loan Maximums (1) ...

(a) Depreciable agricultural property and new agricultural improvements loan(s) totaling no more than $500,000 in aggregate.

(b) Agricultural land and existing agricultural improvements and used depreciable agricultural property loan(s) totaling no more than ~~$500,000~~ $250,000 in aggregate.

(2) The total amount that may be loaned to any individual and/or partnership and/or joint venture, individually, or in the aggregate shall not be more than $500,000 for new depreciable agricultural property and new improvements to agricultural land and ~~$500,000~~ $250,000 for agricultural land and existing agricultural improvements and used depreciable agricultural property.

5. The change is being proposed to comply with revised federal law pertaining to the issuance of private purpose, tax exempt industrial development revenue bonds. The authority of the Montana Agricultural Loan Authority to make the proposed change is based on section 80-12-103, MCA, and the rule implements section 80-12-103, MCA.

6. The proposed amendment of 4.14.305 will read as follows: (new matter underlined, deleted matter interlined)

"4.14.305 Applicant Eligibility (1)...

(a) The ~~applicant~~ beginning farmer may not have a net worth in excess of $250,000.

(b)...

(g) The beginning farmer intending to purchase agricultural land cannot at any time have had any direct or indirect ownership interest in substantial agricultural land (land which is at least 15% of the median size of a farm/ranch in the county in which such land is located and which while held by the beginning farmer, at no time had a fair market value in excess of $125,000) in the operation of which the beginning farmer materially participated. For the purposes of this subsection, any ownership or material participation by the beginning farmer's spouse or minor children is treated as ownership and material participation by the beginning farmer.

(h) The beginning farmer must intend to materially and substantially participate in the operation of the agricultural land or depreciable assets purchased through the Authority loan."

7. The change is being proposed to comply with revised federal law pertaining to the issuance of private purpose, tax exempt industrial development revenue bonds. The authority of the Montana Agricultural Loan Authority to make the proposed change is based on section 80-12-103, MCA, and the rule implements sections 80-12-203 and 80-12-204, MCA.

8. The proposed amendment of 4.14.601 will read as follows: (new matter underlined, deleted matter interlined)

4.14.601 Tax Deduction (1) The Authority will follow rules of the Montana Department of Revenue implementing the tax deduction provided in Title 80, Chapter 12, Section 80-12-211, MCA, for the sale of qualifying land on a long term contract ~~for deed~~ to a beginning farmer. The repayment period (term) of the long term contract ~~for deed~~ must extend for a period of ten (10) years or more. In addition, the dollar amount of the long term contract ~~for deed~~ must be fifty one percent (51%) or more of the total purchase price of the land. The transaction must be approved in advance by the Authority.

(2)...

(5) A non-refundable $25 application fee will be

charged by the Authority and must accompany the appropriate application form (obtainable from the Authority) to cover administrative costs.

9. The change is being proposed to provide for consistency between the enabling legislation and Authority rules and for clarification to inform the applicants for tax deduction that the application fee is in fact non-refundable. The authority of the Montana Agricultural Loan Authority to make the proposed change is based on section 80-12-103, MCA, and the rule implements section 80-12-211, MCA.

10. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Agricultural Loan Authority, Montana Department of Agriculture, Agriculture/Livestock Building, Sixth and Roberts, Helena, Montana 59620, no later than November 12, 1984.

11. 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, they must make written request for a hearing and submit their request along with any comments to the Montana Agricultural Loan Authority no later than November 12, 1984.

12. If the department receives requests for a public hearing on the proposed amendments from either ten percent (10%) or 25, whichever is less, of those persons who are directly affected by the proposed amendments; from the Administrative Codes Committee of the Legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a 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.

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

Montana Agricultural Loan Authority

By: _____

Certified to the Secretary of State: October 1, 1984

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

In the matter of the proposed amendments of 8.97.410 concerning guaranteed loan program, 8.97.501 concerning definitions, 8.97.503 concerning description of economic development bonds, 8.97.505 concerning eligibility requirements, 8.97.507 concerning application procedures and 8.97.509 concerning fees.	NOTICE OF PROPOSED AMENDMENT OF 8.97.410 GUARANTEED LOAN PROGRAM, 8.97.501 DEFINITIONS, 8.97.503 DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAM, 8.97.505 ELIGIBILITY REQUIREMENTS, 8.97.507 APPLICATION PROCEDURE, 8.97.509 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 10, 1984, the Montana Economic Development Board proposes to amend the above-stated rules.

2. The proposed amendment of 8.97.410 will amend subsection (3) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3491 - 3492, Administrative Rules of Montana)

"8.97.410 GUARANTEED LOAN PROGRAM (1) ...

(3) All guarantees issued by the board, except those issued as guarantees for Industrial Development Bonds, shall provide that a financial institution to which the board has issued a guarantee may at any time at its discretion request the board to purchase the guaranteed portion of the loan at the interest rate established by the board when it issued its commitment,

(4) ..."

Auth: 17-6-324, MCA Imp: 17-6-308, 324, MCA

3. The board is proposing the amendment to make it clear that the board will not purchase its guaranteed portion of a tax-exempt loan, as the rate on the loan would be lower than the board's expected rate of return.

4. The proposed amendment of 8.97.501 will delete subsections (2) (a) and (b) and renumber all remaining subsections thereafter and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3497, Administrative Rules of Montana)

"8.97.501 DEFINITIONS (1) ...

(2) As used in Sub-Chapter 5, and unless the context clearly requires another meaning:

~~(a) 'minor project' means a project the cost or appraised value of which is less than $1,000,000.~~
~~(b) 'major project' means a project the cost or appraised value of which exceeds $1,000,000, but is less than $10,000,000.~~
~~(c)~~ (a) ..."
Auth: 17-5-1521, MCA Imp: 17-5-1521, MCA

5. The board is proposing these amendments to this rule, as well as 8.97.503, and 8.97.505 to allow projects which seek financing of up to $1,000,000 to participate in the Pooled Industrial Revenue Bond Program.

The board seeks to allow participation in the Pooled Industrial Bond Program to be determined by the size of financing as opposed to the cost or appraised value of projects, as this is a more relevant factor to consider when determing the need for assistance in pooled bond financing.

6. The proposed amendment of 8.97.503 will amend subsections (2), (4)(a) and (b) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3498 and 8-3499, Administrative Rules of Montana)

"8.97.503 DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAM (1) ...

(2) For projects ~~the cost or appraised value of which~~ for which the financing to be provided by the board is less than $1,000,000, ~~minor projects,~~ the originator or another approved financial institution must participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board. For projects ~~the cost or appraised value of which~~ for which the financing to be provided by the board exceeds $1,000,000 but the cost of the project is less than $10,000,000, ~~major projects,~~ the originator shall participate in the financing of the project at the discretion of the board. In determining whether to require such participation the board shall consider:

(a) ...

(4) The board will issue its industrial development revenue bonds under one of its two programs, the Pooled IDB Program or the Stand Alone Program.

(a) under the Pooled IDB Program, the board will issue one or more series of bonds to finance loans for ~~minor projects~~ projects for which the financing to be provided by the board is less than $1,000,000 only. The bonds will be secured by the loan repayments and other forms of common security as the board deems appropriate and as allowed pursuant to sections 17-5-1515 and 17-5-1520, MCA.

(b) under the Stand Alone Program, ~~both major and minor~~ projects may be financed by the issue of a single bond

for each project. Bonds issued pursuant to this program will not be secured by any common reserves and may be sold to a purchaser selected by the borrower."

Auth: 17-5-1504, MCA Imp: 17-5-1505, 1526, 1527, MCA

7. The board is proposing the change for the reason stated in paragraph 5.

8. The proposed amendment of 8.97.505 will amend subsection (2) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3499 and 8-3500, Administrative Rules of Montana)

"8.97.505 ELIGIBILITY REQUIREMENTS (1) ...

(2) With respect to projects ~~the costs or appraised value of which~~ for which the financing to be provided by the board is less than $1,000,000, in addition to meeting the above criteria the financing must be participated in by the originator or another approved financial institution, in a form acceptable to the board, to an extent of at least 10% of the financing to be provided by the board. An approved financial institution wishing to participate in a board financing under the pooled IDB program must certify at the time an application for such financing is submitted that the institution's participation in, including the letter of credit proposed to be issued for the financing being requested, together with its participation in, including the amounts of letters of credit outstanding for other financings under the board's Pooled IDB program, does not exceed (15%) of its asset base.

(3) ..."

Auth: 17-5-1504, 1521, MCA Imp: 17-5-1521, 1526, 1527, MCA

9. The change is proposed for the reason stated in paragraph 5.

10. The proposed amendment of 8.97.507 will amend subsections (8) and (9) and will read as follows: (New matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3501 - 8-3503, Administrative Rules of Montana)

"8.97.507 APPLICATION PROCEDURE (1) ...

(8) After the board has approved an application for financing and before the board issues its bonds, ~~it~~ a project description shall be submitted to the governor. The governor shall, in writing, approve the project and certify that the public hearing thereon was conducted in compliance with section 103 of the Internal Revenue Code.

(9) After an application has been approved by the board ~~and the governor~~, the board may issue a conditional

commitment. The conditional commitment is evidence of the board's intention to authorize the issuance of and offer for sale, its bonds to finance the project in accordance with the terms of the application and any additional conditions set forth in the commitment."

Auth: 17-5-1504, 1521,MCA Imp: 17-5-1521, 1526, 1527, MCA

11. The board is proposing this amendment to allow the Governor to approve a pool of projects, as opposed to the need to approve each project on an individual basis.

12. The proposed amendment of 8.97.509 will amend subsection (2)(a), add new subsections (2)(c), (c)(i), (ii) and (iii) and a new subsection (6) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3503 and 8-3504, Administrative Rules of Montana)

"8.97.509 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES (1) ...

(2)(a) At the time revenue bonds are issued by the board under ~~either~~ the Pooled ~~or Stand Alone~~ IDB Program to provide financing for a project, the borrower shall pay to the board a financing fee based on the principal amount of revenue bond issued on behalf of that borrower calculated as follows:

(i) ... (c) At the time revenue bonds are issued by the board under the Stand Alone IDB Program to provide financing for a project, the borrower shall pay to the board a financing fee based on the principal amount of revenue bonds issued on behalf of that borrower calculated as follows:

(i) .4 percent of the first $400,000, with a minimum of $1,200, plus

(ii) .1 percent of the next $600,000, plus

(iii) .05 percent of any amount over $1,000,000.

The borrower shall pay additional fees to be established by the board if the board guarantees the Stand Alone bond or provides other forms of credit enhancement.

(3) ...

(6) If a Pooled or Stand Alone IDB loan has been induced by a unit of local government, the board may at its discretion negotiate a sharing of fees with the unit of local government. This provision does not apply to the holding of public hearings under ARM 8.97.507."

Auth: 17-5-1521, MCA Imp: 17-5-1504, 1521, MCA

13. The amendment is proposed to provide separate fee schedules for Stand Alone IDB bonds. These are the fees the board has determined necessary to cover administrative costs and fund the reserve and guarantee funds. The rate for Stand Alone bond issues are lower than the rates for the Pooled Program because administrative costs are less.

14. 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 November 8, 1984.

15. 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 November 8, 1984.

16. 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
D. PATRICK McKITTRICK
CHAIRMAN

BY: Isabelle Pistelak
ISABELLE PISTELAK,
ADMINISTRATOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 1, 1984.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.57.207 Correspondence Extension and In-Service Credits, Rule 10.57.208 Reinstatement, and Rule 10.57.402 Class 2 Standard Teaching Certificate	NOTICE OF PROPOSED AMENDMENT OF RULE 10.57.207 CORRESPONDENCE EXTENSION AND IN-SERVICE CREDITS, RULE 10.57.208 REINSTATEMENT, AND RULE 10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 12, 1984 the Board of Public Education proposes to amend Rule 10.57.207 Correspondence Extension and In-Service Credits, Rule 10.57.208 Reinstatement, and Rule 10.57.402 Class 2 Standard Teaching Certificate.

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

10.57.207 CORRESPONDENCE EXTENSION AND IN-SERVICE CREDITS (1) through (4) (d) remain the same.

(e) Provide instruction in a language other than English. Courses previously taken may not be taken again for renewal purposes unless specifically approved. Requests for approval must be in writing with appropriate justification.

(5) remains the same.

AUTH: Sec. 20-2-121(1) MCA
IMP: Sec. 20-4-102, 20-4-103, 20-4-106, 20-4-108 MCA

10.57.208 REINSTATEMENT (1) through (5)(d) remain the same.

(e) Provide instruction in a language other than English. Courses previously taken may not be taken again for renewal purposes unless specifically approved. Requests for approval must be in writing with appropriate justification.

(6) remains the same.

AUTH: Sec. 20-2-121(1) MCA
IMP: Sec. 20-4-102, 20-4-103, 20-4-106, 20-4-108 MCA

10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE (1) through (9)(d) remain the same.

(e) Provide instruction in a language other than English. Courses previously taken may not be taken again for renewal purposes unless specifically approved. Requests for approval must be in writing with appropriate justification.

AUTH: Sec. 20-2-121(1) MCA
IMP: Sec. 20-4-102, 20-4-103, 20-4-106, 20-4-108 MCA

3. The Board of Public Education is proposing these rules because the present policy allows teachers to be recertified by taking any college course regardless of whether or not it is related to their teaching assignment. The change in this policy will result in credit which is applicable for recertification consistent with the assignment of the teacher.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than November 8, 1984.

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 Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than November 8, 1984.

6. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,000 persons based on approximately 20,000 teachers in the state of Montana.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Lindsay Lou D. Jm

Certified to the Secretary of State October 1, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule relating to School Program Evaluation	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE - SCHOOL PROGRAM EVALUATION

TO: All Interested Persons.

1. On November 29, 1984, at 10:00 a.m. to 12:00 p.m., a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana 59620 in the matter of adoption of rules relating to School Program Evaluation. The effective date of this rule will be September 1, 1985.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE I SCHOOL PROGRAM EVALUATION (1) Every school district shall have a formal program that identifies progress toward identified learner goals.

(2) All schools shall administer one of the tests listed under (3) to students in grades 3, 6, 8, and 10 in the Fall or Spring within two weeks either side of the Fall or Spring norming date for the particular test used.

Results for each specified grade level will be reported to the Office of Public Instruction no later than September 1st of the following school year in a format specified by the Office of Public Instruction.

Joint elementary and secondary districts are not required to use the same company's tests at the elementary and secondary levels.

Districts are encouraged to use functional level testing for all students. All mild or moderately handicapped students who are attending regular classrooms or resource rooms are expected to participate in this testing. Only those students who are severely handicapped or non-readers should be excluded.

(3) The following tests and norming dates shall be used:

California Achievement Test (CAT) 1977-78
October 3 and April 4
Comprehensive Test of Basic Skills (CTBS) 1981-82
October 22 and April 8
Iowa Test of Basic Skills (ITBS) 1978
October 8 and April 28
Metropolitan Achievement Test 1978
October 15 and April 20
SRA Achievement Series 1978
October 1 and April 15
Stanford Achievement Test 1981
October 8 and May 8

AUTH: Sec. 20-2-121(7) MCA IMP: Sec. 20-7-101(7) MCA
MAR Notice No. 10-3-85 19-10/11/84

4. The board of public education is proposing this rule to:

(a) Ensure that every school district in the State of Montana fulfills the constitutional mandate that "it is the goal of the people to establish a system of education which will develop the full educational potential of each person."

(b) To provide minimum criteria for program evaluation in each district.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than November 30, 1984.

6. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Hidde Van Duym

Certified to the Secretary of State October 1, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.55.402 Minimum Units for Graduation	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 10.55.402 MINIMUM UNITS FOR GRADUATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 12, 1984, the Board of Public Education proposes to amend rule 10.55.402(2) minimum number of units for graduation.

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

10.55.402 BASIC INSTRUCTIONAL PROGRAM, HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) Remains the same.

(2) A high school shall require a minimum of ~~16 units~~ 18 units of the graduating class of 1988, and 20 units of the graduating class of 1989 and following years, for graduation including ninth grade units; however, at its discretion, the governing authority may require additional units of credit for graduation. A unit of credit shall be given for satisfactory completion of a full-unit course. At the discretion of the local administrator, fractional credit may be given for partial completion of a course.

(3) through (10) remains the same.

AUTH: Section 20-2-121(7); 20-7-101 and 20-7-111.
IMP: Section 20-2-121(7) and 20-7-101

3. The Board is renoticing this rule because the text as submitted lacked clarity as to what class of students was subject to the effective dates listed.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than November 8, 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, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than November 8, 1984.

6. If the Board receives requests for a public hearing on the proposed amendment from 10% 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 4500 or 10% of 45,000 students in secondary schools.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Wanda Lou Quinn

Certified to the Secretary of State October 1, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule 10.55.205 Supervisory and Administrative Time and rule 10.65.101 Policy Governing Pupil Instruction-related days approved for foundation program calculations	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 10.55.205 SUPERVISORY AND ADMINISTRATIVE TIME AND 10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS

TO: All Interested Persons.

The notice of proposed amendments published in the Montana Administrative Register on August 30, 1984, page 1163, issue number 16, is amended as follows because the required number of persons designated therein have requested a public hearing: (The effective date of this rule will be September 1, 1985.)

1. On November 7, 1984, at 1:30 p.m., a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana 59620 to consider the amendments and adoption of the above-stated rules.

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

10.55.205 PROFESSIONAL DEVELOPMENT The amendments are the same as proposed in the original notice.

10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) through (1) (d) remain the same.

~~(e) State teachers' association meetings (not to exceed two days);~~

(e) A school district may count for the following year's foundation program a total of not more than three and one-half days in addition to the required 90 pupil instruction days for kindergarten purposes, provided that such additional days were used for one or more of the above-named purposes and upon proper submission of the application to the state superintendent.

AUTH: Sec. 20-2-121(6) MCA
IMP: Sec. 20-1-304 MCA

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

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than November 9, 1984.

5. The Board or its designee will preside over and conduct the hearing.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: _____

Certified to the Secretary of State October 1, 1984

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.6.901 relating to the establishment of a 25-horsepower maximum limit for motorboats on portions of the Bighorn River.	) NOTICE OF PUBLIC HEARINGS ON THE PROPOSED AMENDMENT OF ARM 12.6.901 - ESTABLISHMENT OF A 25-HORSEPOWER MAXIMUM LIMIT FOR MOTORBOATS ON PORTIONS OF THE BIGHORN RIVER DURING PART OF THE WATERFOWL SEASON

TO: All Interested Persons:

1. On October 31, 1984, at 7:00 p.m. a public hearing will be held in the Community Service Building, Custer and Eighth, Hardin, Montana, and on November 1, 1984, at 7:00 p.m. a public hearing will be held at the Billings Rod and Gun Club, Rod and Gun Club Road, Billings, Montana, which is located 2 1/2 miles west of Billings Logan International Airport, Highway 3. The meetings will be held to consider the proposed amendment of ARM 12.6.901.

2. The proposed rule will amend the current rule found in 12.6.901 of the Administrative Rules of Montana. The proposed amendment would place a maximum limit of 25 horsepower on the motor or machinery used to propell a boat or water craft on those portions of the Bighorn River and during that period of time each year as set out in the proposed amendment. The amendment must be reviewed and approved by the Department of Health and Environmental Sciences before becomming effective as required by section 87-1-303, MCA.

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

"12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) The following waters are closed to use for any motor-propelled water craft except in case of use for official patrol, search and rescue, maintenance or hydroelectric projects and related facilities with prior notification by the utility, or for scientific purposes;

Beaverhead County:	Big Hole River
Big Horn County:	Arapooish access area
Cascade County:	Smith River
	That portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle and that portion of the Missouri River from the Warden Bridge on

	10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.
Custer County:	Branum Pond
Deer Lodge County:	Big Hole River
Gallatin County:	Bozeman Ponds
Granite County:	Bear Mouth rest area pond
Hill County:	Bearpaw Lake
Jefferson County:	Park Lake
Lewis & Clark County:	Wood Lake Spring Meadow Lake
Madison County:	Big Hole River
Meagher County:	Forest Lake - Smith River
Missoula County:	Frenchtown Pond - Harpers Lake
Ravalli County:	Twin Lakes
Richland County:	Gartside Reservoir
Silver Bow County:	Big Hole River
Toole County:	Henry Reservoir - Fitzpatrick Lake

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horsepower, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(i) all rivers and streams in the following counties east of the continental divide:

Silver Bow Beaverhead Jefferson Madison	Gallatin-exception: Missouri downriver from Headwaters state park Park-exception: Yellowstone downriver from I-90 bridge at Livingston Broadwater-exception: Missouri downriver from the Broadwater-Gallatin county line

(ii) other waters of the state as follows:

Hill County:	Beaver Creek Reservoir
Fallon County:	South Sandstone Reservoir

(c) The following water is closed to use by all boats propelled by machinery of over 25 horsepower, except in cases of use for search and rescue, official patrol, maintenance of power transmission lines and related facilities with prior notification to the department, or for scientific purposes:

Big Horn, Yellowstone and Treasure Counties:	That portion of the Bighorn River from the department's Bighorn access area downriver to the confluence of the Bighorn River with the Yellowstone River from and including November 10 through the end of the waterfowl season each year. The Bighorn access area is approximately 29 miles south of Hardin on secondary 313 and is located in section 30, T5S, R32E, M.P.M.

(d)~~(c)~~ The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Broadwater County:	(A) on Canyon Ferry Reservoir; White Earth and Goose Bay; within 300 feet of dock or as buoyed;
Carbon County:	(A) on Cooney Reservoir; all of Willow Creek arm as buoyed.
Daniels County:	Whitetail Reservoir;
Fergus County:	(A) upper & lower Carter Ponds;
	(B) Crystal Lake 5:00 a.m. to 10:00 a.m. and 7:00 to 11:00 p.m. each day;
Flathead County:	(A) on Flathead Lake: Bigfork Bay
	(B) Beaver Lake (near Whitefish) 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;
Hill County:	(A) Beaver Creek Reservoir
Lewis & Clark County:	(A) on Canyon Ferry Reservoir; Yacht Basin, Cave Bay, Little Hellgate, Magpie Bay & Carp Bay within 300 feet of dock or as buoyed;
	(B) on Hauser Reservoir: Lakeside marina and Black Sandy beach within 300 feet of the docks or as buoyed;
	(C) on upper Holter Lake: Gates of Mountains marina within 300 feet of docks or as buoyed;
	(D) on Holter Lake: bureau of land management boat landing as buoyed, Juniper Bay, Log Gulch, Departure Point, Merriweather Camp, and Holter Lake lodge docks;
Lincoln County:	(A) Savage Lake during the hours of 5:00 a.m. to 10:00 a.m. and from 7:00 p.m. to 11:00 p.m. each day;
Missoula County:	(A) Clearwater River from the outlet of Seeley Lake to the first bridge downstream from camp Paxson swim dock;
	(B) on Holland Lake: Holland Lake within 300 feet or as buoyed.

(e)~~(d)~~ The following waters are closed to water skiing:

Lewis and Clark County:	(A) on Saturday & Sunday of each week and on all legal holidays

from the mouth of the Canyon on upper Holter Lake to Gates of Mountains near Mann Gulch, as marked.

Valley County: (A) Fort Peck Dredge Cut Trout Pond

(f) ~~(e)~~ On the following waters all boats pulling, taking off with, and landing water skiers will travel in a general, consistent counterclockwise direction:

Missoula County: Alva Lake, Inez Lake, Seeley Lake.

Carbon County: Cooney Reservoir

(2) This rule has been reviewed and approved by the department of health and environmental sciences."

AUTH: 87-1-303, 23-1-106, MCA; IMP 87-1-303, 23-1-106, MCA.

4. The Fish and Game Commission (Commission) is proposing this amendment to its rule to limit the speed of motor-propelled boats on the designated portions of the Bighorn River during part of the waterfowl season. The Commission anticipates that the use of larger motors would create hazardous situations for waterfowl hunters, fishermen and others on the river and would disrupt and disturb migratory waterfowl to their detriment.

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 Bob Lane, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 8, 1984.

6. Bob Lane has been designated to preside over and conduct the hearing.

SPENCER S. HEGSTAD, Chairman
Montana Fish and Game Commission

BY: Richard L. Johnson
RICHARD L. JOHNSON, Deputy Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State October 1, 1984 .

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

In the matter of the amendment of rules 16.20.605, 16.20.607, 16.20.617, 16.20.618, 16.20.619, 16.20.620, 16.20.621, 16.20.622, 16.20.624, 16.20.631, 16.20.633, relating to water quality standards and classifications	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES (Water Quality)

TO: All Interested Persons

1. On November 16, 1984, 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 rules concerning water quality classifications and standards.

2. The proposed amendments replace present rules 16.20.605 (page 16-938, ARM); 16.20.607 (page 16-939, ARM); 16.20.617 (page 16-950, ARM); 16.20.618 (page 16-951, ARM); 16.20.619 (page 16-952, ARM); 16.20.620 (page 16-954, ARM); 16.20.621 (page 16-955, ARM); 16.20.622 (page 16-957, ARM); 16.20.624 (page 16-959, ARM); 16.20.631 (page 16-965, ARM); 16.20.633 (page 16-966, ARM). The changes make various minor corrections, update references, and clarify procedures relating to water quality standards.

3. Identical technical changes are proposed for seven of the above-cited rules, the substance of which is as follows:

(a) In the turbidity standards for water classifications A-1, B-1, B-2, B-3, C-1, C-2, and C-3, set forth in ARM 16.20.617(3)(d), 16.20.618(2)(d), 16.20.619(2)(d), 16.20.620(2)(d), 16.20.621(2)(d), 16.20.622(2)(d) and 16.20.624(2)(d), the reference to "ARM 16.20.631 through 16.20.635 and ARM 16.20.641 and 16.20.642" is changed to "ARM 16.20.633."

(b) In the standards for toxic or deleterious substances for water classifictions A-1, B-1, B-2, B-3, C-1, C-2, C-3, set forth in ARM 16.20.617(3)(h), 16.20.618(2)(h), 16.20.619(2)(h), 16.20.620(2)(h), 16.20.621(2)(h) and (i), 16.20.622(2)(h) and (i), and 16.20.624(2)(h), references to "Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book), or "The Red Book," are changed to "EPA Water Quality Criteria documents (Federal Register Vol. 45, No. 231, Friday, November 28, 1980, pages 79318 - 79379)".

(c) In addition, the following required incorporation by reference language is proposed to be inserted in each of the rules listed in (b) above: "The board hereby adopts and incorporates by reference "EPA Water Quality Criteria documents (Federal Register Vol. 45, No. 231, Friday, November 28, 1980, pages 79318 - 79379)", which set forth water quality criteria for toxic or other deleterious substances. Copies of this document may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620."

Copies of the amended rules may be obtained from the address in paragraph (c).

4. The remainder of the rules as proposed for amendment provide as follows (matter to be stricken is interlined, new material is underlined):

16.20.605 WATER-USE CLASSIFICATIONS -- FLATHEAD RIVER DRAINAGE The water-use classifications adopted for the Flathead River are as follows:

(1) Flathead River drainage above Flathead Lake except waters listed in subsections (1)(a) through (1)~~(g)~~ (h) . . . . . A-~~1~~ B-1

(a) through (g) Same as existing rule

(h) North and middle forks of the Flathead River above their junction A-1

(2), (3) Same as existing rule

AUTHORITY: Sec. 75-5-301 MCA
IMPLEMENTING: Sec. 75-5-301 MCA

16.20.607 WATER-USE CLASSIFICATIONS -- MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES The water-use classifications adopted for the Missouri River are as follows:

(1) Missouri River drainage to and including the Sun River drainage except tributaries listed in subsections (1)(a) through (1)~~(n)~~ (m) B-1

(a), (b) Same as existing rule

~~(c) Remainder of the Lyman and Sourdough Creek drainages . . . . . B-2~~

(d) through (n) Same as existing rule except for relettering.

(2), (3) Same as existing rule.

(4) Marias River drainage except the tributaries listed in subsections (4)(a) through (4)~~(d)~~ (f) . . B-2

(a) through (d) Same as existing rule.

(e) Marias River below Highway 223 . . . . . B-3

(f) Teton River below Highway (Interstate) 15 . B-3

(5) Missouri River drainage from Marias River to Fort Peck Dam except waters listed in subsections (5)(a) through (5)(e) C-3

(a) through (d) Same as existing rule.

(e) Musselshell River drainage except for the waters listed in subsections (5)(e)(i) through (5)(e)~~(v)~~ (vi) B-1

(i) Musselshell River (mainstem) from Hopley Creek to Deadman's Basin Diversion Canal near Shawmut B-2

(ii) Musselshell River drainage below Deadman's Basin diversion canal above Shawmut except portions of Careless, Swimming Woman, Flatwillow ~~and~~ , South Willow Creek and Deadmans Basin Reservoir ~~drainages~~ listed below C-3

(iii) Careless and Swimming Woman Creek drainage above their confluence north of Ryegate . . B-1

(iv) Flatwillow Creek drainage above U.S. Highway 87 crossing south of Grassrange B-2

(v) South Willow Creek drainage above county road bridge in T10N, R24E, Section 7 . . . . . B-1

(vi) Deadmans Basin Reservoir B-1

(6) through (9) Same as existing rule.

AUTHORITY: Sec. 75-5-301 MCA
IMPLEMENTING: Sec. 75-5-301 MCA

16.20.624 C-3 CLASSIFICATION (1) Waters classified C-3 are suitable for bathing, swimming and recreation, growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers. The quality of these waters is naturally marginal for drinking, culinary and food processing purposes, agriculture and industrial water supply. ~~however since no better quality of water is available for these uses, degradation~~ Degradation which will impact established beneficial uses will not be allowed.

(2)(a) through (g) No changes, except as provided in paragraph 3 of this notice.

(h) Concentrations of toxic or other deleterious substances which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141). ~~Concentrations of toxic or other deleterious substances must not exceed levels which render the waters harmful, detrimental or injurious to public health.~~ The maximum allowable concentrations of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in EPA Water Quality Criteria documents (Federal Register Vol. 45, No. 231, Friday, November 28, 1980, pages 79318-79379) ~~Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book)~~ shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.

AUTHORITY: Sec. 75-5-301 MCA
IMPLEMENTING: Sec. 75-5-301 MCA

16.20.631 TREATMENT STANDARDS

(1) through (4) Same as existing rule.

(5) Where the department has determined that the disposal of sewage may adversely affect the quality of a lake or other state waters, the department may require additional information and data concerning such possible effects. Upon review of such information the department may impose specific

requirements for sewage treatment and disposal as are necessary and appropriate to assure compliance with the water quality act, Title 75, Chapter 5, MCA.
AUTHORITY: Sec. 75-5-301 MCA
IMPLEMENTING: Sec. 75-5-301 MCA

16.20.633 PROHIBITIONS (1) State surface waters must be free from substances attributable to municipal, industrial, agricultural practices or other discharges that will:

(a), (b) Same as existing rule.

(c) Produce odors, colors or other conditions ~~as to~~ which create a nuisance or ~~render~~ produce undesirable tastes in fish flesh or make fish inedible;

(d) Create concentrations or combinations of materials which are toxic or harmful to human, animal, plant or aquatic life; or

(e) Create conditions which produce undesirable aquatic life.

(2) Same as existing rule.

(3) No wastes are to be discharged and no activities conducted which, either alone or in combination with other wastes or activities, will cause violations of surface water quality standards; provided, a short term exemption from a surface water quality standard may be authorized by the department under the following conditions:

(a) If the Department of Fish, Wildlife and Parks reviews a short-term construction or hydraulic project under section ~~76-5-501~~ 87-5-501 et seq., MCA, or section 75-7-101 et seq., MCA, an increase in turbidity caused by the project ~~will be~~ is exempt from the applicable turbidity standard unless the department is advised by the Department of Fish, Wildlife and Parks that they have recommended denial or modification of the project. ~~the project may result in a significant increase in turbidity.~~ If the department is advised ~~that the project may cause a significant increase in turbidity, the~~ by the Department of Fish, Wildlife and Parks that they have recommended denial or modification of the project, the project will be exempt from the applicable turbidity standard only if it is carried out in accordance with conditions prescribed by the department in a 16.20.633(3) authorization.

(i) A 16.20.633(3) application form must be submitted to the department by the applicant and a 16.20.633(3) authorization issued by the department prior to the day on which the applicant commences the short-term construction or hydraulic project.

(b) If the department approves the location, timing, and methods of game fish population restoration authorized by the Department of Fish, Wildlife and Parks, restoration activities causing violations of surface water quality standards may be exempt from the standards.

(c) If a short-term activity other than those described in (a) and (b) above causes unavoidable short-term violations of the turbidity, total dissolved solids, or temperature standards, the activity is exempt from the standard if it is carried out in accordance with conditions prescribed by the department in a 16.20.633(3) authorization form.

(i) A 16.20.633(3) application form must be submitted to the department by the applicant and a 16.20.633(3) authorization issued by the department prior to the day on which the applicant commences the short-term activity.

(4) Leaching pads, tailing ponds or holding facilities ~~utilized in the processing of ore~~ used to process, treat or hold industrial process fluids or industrial wastes must be located, constructed, operated and maintained in such a manner and of such materials so as to prevent ~~the~~ discharge, seepage, drainage, infiltration, or flow which may result in the pollution of surface waters. The department may require that a monitoring system be installed and operated if the department determines that pollutants are likely to reach surface waters or present a substantial risk to public health.

(a) Complete plans and specifications for proposed leaching pads, tailing ponds or holding facilities ~~utilized in the processing of ore~~ must be submitted to the department no less than 180 days prior to the day on which it is desired to commence their operation.

(b) Leaching pads, tailing ponds or holding facilities operating as of the effective date of this rule, as amended, ~~utilized in the processing of ore~~ must be operated and maintained in such a manner so as to prevent ~~the~~ discharge, seepage, drainage, infiltration or flow which may result in the pollution of surface waters.

(5) through (11) Same as existing rule.

AUTHORITY: Sec. 75-5-301 MCA
IMPLEMENTING: Sec. 75-5-301 MCA

5. Section 75-5-301(3), MCA, requires the department to conduct periodic reviews of the water quality classification and standards. The proposed revisions are a result of such review, and are, generally, minor revisions and adjustments in the standards.

In rules 16.20.617, 16.20.618, 16.20.619, 16.20.620, 16.20.621, 16.20.622, and 16.20.624, the references to turbidity standards are proposed to be changed since the old references included rules which do not address turbidity. Those rules also update the reference to the new EPA document which is used for determining problem levels of toxic and deleterious substances.

Rule 16.20.605(1) These changes are made to correct a mistake made during the last revision. Glacier National Park's boundary is the middle of the north and middle fork of the Flathead River. Thus, one side of these rivers was classified B-1 and the other side was A-1.

Rule 16.20.607 Deletion of (1)(c) corrects an error made during the last revision. Addition of (4)(e) and (f) is made because the lower sections of both the Teton and Marias Rivers are not trout streams but are in fact warm water streams. Changes in (5)(e) are made to accurately reflect the fact that Deadmans Basin Reservoir is a trout fishery, not a warm water habitat.

Rule 16.20.624 Language is added to subsection (1) to extend explicit protection to the uses mentioned. Language in subsection (2)(h) is changed to clarify the intent.

Rule 16.20.631(5) This is added to clarify the department's authority and responsibility to protect surface waters from nutrient enrichment.

Rule 16.20.633 Changes in subsection (3) clarify the department's response to review of "310" projects by the departmentof fish, wildlife and parks. Changes in subsection (4) extend the applicability of this paragraph to all industrial uses which may impct surface waters, rather than just to mining operations.

6. 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 Abraham Horpestad, Water Quality Bureau, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than November 16, 1984.

7. Allen Chronister, Department of Justice, Office of the Attorney General, Helena, Montana, has been designated to preside over and conduct the hearing.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State October 1, 1984

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

In the matter of the amendment of rules 16.20.701, 16.20.702, 16.20.703, 16.20.704, 16.20.705, relating to non-degradation of water quality	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES RELATING TO NON-DEGRADATION OF WATER QUALITY (Water Quality)

TO: All Interested Persons

1. On November 16, 1984, 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 rules 16.20.701, 16.20.702, 16.20.703, 16.20.704 and 16.20.705, concerning non-degradation of water quality.

2. The proposed amendments replace present rules 16.20.701 through 16.20.705, found at pages 16-923 through 16-978, Administrative Rules of Montana. The proposed amendments would extend the provisions of Montana's water quality non-degradation rules to groundwater.

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

16.20.701 DEFINITIONS In this sub-chapter, the following terms have the meanings indicated below and are supplemental to the definitions set forth in section 75-5-103, MCA:

(1) (a) Except as provided in paragraph (b) of this subsection, "degradation" means that as a result of the activities of man:

(i) the level of coliform bacteria, dissolved oxygen, toxic and deleterious substances or radionuclides in surface water where quality is higher than the established water quality standards has become worse; ~~or~~

(ii) an applicable water quality standard for hydrogen ion concentration (pH), turbidity, temperature, color, suspended solids or oils has been violated in surface water where quality is higher than the established water quality standards;

(iii) the concentration, in groundwater, outside of applicable mixing zones, of a pollutant for which maximum contaminant levels are established in subsection (4) of ARM 16.20.1003 has become worse; or

(iv) the concentration in groundwater of other pollutants, outside of mixing zones, has become worse and will adversely affect existing beneficial uses or beneficial uses reasonably expected to occur in the future.

(b) (i) Changes in surface water quality, or groundwater quality whether or not applicable groundwater quality standards for dissolved substances are violated, resulting from nonpoint source pollutants from lands where all

reasonable land, soil and water management or conservation practices have been applied are not considered degradation.

(ii) Temporary changes in surface water quality resulting from short-term construction or rehabilitation activities performed in accordance with ARM 16.20.633(3) are not considered degradation.

(iii) Changes in surface water quality which occur within a "mixing zone" as defined by ARM 16.20.603(8) are not considered degradation.

(2) "Groundwater" means water occupying the voids within a geologic stratum and within the zone of saturation.

(3)~~(2)~~ "Montana pollutant discharge elimination system (MPDES)" means the system developed by the state of Montana for issuing permits for the discharge of pollutants from point sources into state surface waters, pursuant to ARM Title 16, Chapter 20, sub-chapter 9.

(4) "Montana Groundwater Pollution Control System (MGWPCS)" means the system developed by the state of Montana for issuing permits for the discharge of pollutants into state groundwater, pursuant to ARM Title 16, Chapter 20, sub-chapter 10.

(5)~~(3)~~ "National resource waters" means all surface waters in national parks, wilderness or primitive areas.

(6)~~(4)~~ "New or enlarged point source" means a point source on which construction or major modification commenced or from which discharges increased on or after December 17, 1982. It does not include sources from which discharges have increased if the increase does not exceed the limits established in an existing MPDES permit for that source which was issued prior to December 17, 1982.

(7)~~(5)~~ "Nonpoint source" means a diffuse source of pollutants resulting from the activities of man over a relatively large area, the effects of which normally must be addressed or controlled by a management or conservation practice.

(8) "Permit" means either an MPDES permit or an MGWPCS permit.

(9)~~(6)~~ "Surface waters" means any water on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs and irrigation drainage systems discharging directly into a stream, lake, pond, reservoir or other water on the earth's surface. Water bodies used solely for treating, transporting or impounding pollutants are not considered surface water for the purposes of this sub-chapter.

AUTHORITY: Sec. 75-5-201, 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-303, 75-5-401 MCA

16.20.702 APPLICABILITY AND LIMITATION OF ~~SURFACE~~ STATE WATER NONDEGRADATION -- GENERAL (1) The requirements of this sub-chapter apply to any activity of man which would cause a new or increased source of pollution to ~~surface~~ state waters.

(2) If the board determines, based on necessary economic or social development, that degradation may be allowed, in no event may degradation of ~~surface~~ state waters interfere with or become harmful, detrimental or injurious to public health, recreation, safety, welfare, livestock, wild birds, fish and other wildlife or other beneficial uses.

(3) Degradation of national resource waters is prohibited.

AUTHORITY: Sec. 75-5-201, 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-303, 75-5-401 MCA

16.20.703 PERMIT CONDITIONS TO ENSURE NONDEGRADATION

(1) In issuing ~~an MPDES~~ a permit to a new or enlarged point source, the department shall include conditions in the permit to ensure that the quality of receiving waters whose quality is higher than established water quality standards will not be degraded by the discharge of pollutants from the source.

(2) Conditions which may be imposed on ~~an MPDES~~ a permit to ensure nondegradation of water quality include, but are not limited to:

(a) monitoring of water quality, both upstream and downstream or upgradient and downgradient of the point of discharge, with sufficient frequency to determine whether the quality of the receiving waters is being affected by the discharge;

(b) provisions for varying discharge levels, including periods of zero discharge if necessary, to assure maintenance of water quality. Variations in permitted discharge levels will be established to accommodate as closely as practicable the natural variations and fluctuations in the ~~stream's~~ receiving water's flow and quality. Discharge levels may be established seasonally, adjusted continuously (based on a continuous monitoring program), or established in such other manner as the department deems most appropriate.

(3) In determining the appropriate frequency of monitoring and the appropriate adjustment in effluent discharge levels pursuant to this rule, the department shall consider the quality and beneficial uses of the receiving waters, the natural variations and fluctuations in the ~~stream's~~ receiving water's flow and quality, the presence of other point sources, and such other factors as the department deems relevant to the maintenance of water quality.

(4) Whenever an application for ~~an MPDES~~ a permit is made for a new or enlarged point source which will be located downstream or downgradient from a pre-existing point source for which an MPDES permit was issued prior to December 17, 1982, or for which an MGWPCS permit was issued prior to the effective date of this amendment the baseline for determining the existing quality of the receiving waters will be that level of water quality which would be present from natural and

non-point sources and from point sources for which MPDES permits were issued prior to December 17, 1982, or for which MGWPCS permits were issued prior to the effective date of this amendment in the absence of all new and enlarged point sources upstream or upgradient from the receiving waters. The level used shall be that level which would exist if the existing permitted dischargers were discharging at the maximum levels allowed in their permits.

(5) The department shall impose conditions in MPDES permits sufficient to ensure that the baseline quality of receiving surface waters, as defined in subsection (4) of this rule, will not be degraded at any flow greater than the 7-day 10-year low flow for such waters. In those cases where the 7-day 10-year low flow is not known or cannot be calculated, the department shall determine an acceptable stream flow for disposal system design.

(6) Whenever after ~~an MPDES~~ a permit has been issued continued monitoring reveals new or more accurate information about the natural quality and fluctuations of the receiving waters, and if such new information would justify the amendment of monitoring or discharge limitation provisions in the permit, the department may approve such a modification. The department shall follow the notice and hearing procedures set forth in ARM 16.20.905(4) - (10)~~.~~ for MPDES permits, and ARM 16.20.1014(4)-(9) for MGWPCS permits.

(a) The board hereby adopts and incorporates by reference ARM 16.20.905(4) - (10) which set forth procedures for public notice and public hearings on MPDES permit applications. Copies of ARM 16.20.905(4) - (10) may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(b) The board hereby adopts and incorporates by reference ARM 16.20.1014(4) - (9) which set forth procedures for public notice and public hearings on MGWPCS permit applications. Copies of ARM 16.20.1014(4) - (9) may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 75-5-201, 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-303, 75-5-401 MCA

16.20.704 PROCEDURE FOR PETITIONING FOR AMENDMENTS

(1) If any condition which has been imposed on ~~an MPDES~~ a permit requires the permittee to maintain the quality of receiving waters at levels better than the applicable water quality standards, the permittee may petition the board for a permit amendment as provided in this section. Such a petition must be filed within 30 days after the issuance of the ~~MPDES~~ permit. The procedures of this sub-chapter are also available to operators of pollution sources not subject to ~~MPDES~~ permit requirements.

(2) The petition must be filed with the board for its review and a copy concurrently submitted to the Water Quality Bureau of the department. The Water Quality Bureau shall submit copies of the petition to the Departments of Fish, Wildlife and Parks, State Lands, Agriculture, Commerce, and Natural Resources and Conservation, and the Environmental Quality Council.

(3) The department may require that a petition contain such of the following information as is warranted by the potential impacts of a proposed change in water quality and as will allow the board to determine whether the proposed change will preclude present and anticipated use of the affected waters and is justifiable as a result of necessary economic or social development:

(a) the proposed effluent or discharge limitation(s);

(b) a statement of reasons for the proposed effluent or discharge limitation(s);

(c) an analysis of the existing quality of the receiving water, including natural variations and fluctuations in the water quality parameter(s) for which an exemption from non-degradation conditions is requested;

(d) a complete description of the proposed development;

(e) an analysis of alternatives to the proposed effluent or discharge limitation(s) with justifications for not using alternatives that would result in no degradation or less degradation;

(f) an analysis of the quality of the proposed discharge;

(g) the distribution of existing flows and their expected frequency;

(h) an analysis demonstrating the expected stream or groundwater quality for all alternatives;

(3)(i) through (n) Same as existing rule.

(4) Same as existing rule

AUTHORITY: Sec. 75-5-201, 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-303, 75-5-401 MCA

16.20.705 DEPARTMENT AND BOARD PROCEDURES FOLLOWING RECEIPT OF COMPLETED PETITION

(1) through (4) Same as existing rule.

(5)(a) At its next regularly scheduled meeting following the department's submission to the board pursuant to subsection (4), the board shall hold a public hearing on the petition, at which the board may receive oral and documentary evidence from the petitioner and the public. The petitioner will be entitled to present his evidence and submit rebuttal evidence, and the petitioner and the department may conduct such cross-examination as may be required, in the board's judgment, for a full and true disclosure of the facts.

(b) At least 30 days prior to that hearing, the department shall comply with the following:

(i) the "Public Notice Procedures" set forth in ARM 16.20.912; and

(ii) the "Distribution of Information" procedures set forth in ARM 16.20.913~~,~~ and ARM 16.20.1021.

(c) The board hereby adopts and incorporates by reference ARM 16.20.912, which sets forth procedures for issuing public notices of MPDES permit applications and hearings, and ARM 16.20.913 and ARM 16.20.1021 which ~~sets~~ set forth requirements for distribution and copying of public notices and permit applications. Copies of ARM 16.20.912, ~~and~~ 16.20.913 and 16.20.1021 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(6) Same as existing rule.

AUTHORITY: Sec. 75-5-201, 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-303, 75-5-401 MCA

4. These regulations are being proposed in order to more clearly define the state's policy of non-degradation as it applies to the groundwater quality standards. Similar or parallel regulations are already in effect pertaining to the surface water quality standards. The regulations would establish the procedures whereby a permittee holding a groundwater pollution control permit may petition the state board of health for an amendment relieving him from maintaining the quality of receiving waters at levels better than the applicable water quality standards. These regulations are, in fact, an extension of the existing non-degradation regulations so that they will now include groundwater.

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 Abraham Horpestad, Water Quality Bureau, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than November 16, 1984.

6. Allen Chronister, Department of Justice, Office of the Attorney General, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on sections 75-5-201, 75-5-401, MCA, and the rules implement sections 75-5-303, 75-5-401, MCA.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State October 1, 1984

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

In the matter of the amendment of rule 16.20.914 and the adoption of RULE I concerning issuance of general permits for Montana pollutant discharge elimination systems and Montana groundwater pollution control systems	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.20.914 AND ADOPTION OF A NEW RULE (Water Quality)

TO: All Interested Persons

1. On November 16, 1984, 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 16.20.914 and the adoption of RULE I concerning issuance of general permits for MPDES and MGWPCS.

2. The proposed amendment replaces present rule 16.20.914 found in the Administrative Rules of Montana. The proposed amendment would add a potential category of general MPDES permits for discharge of treated oilfield wastes.

3. The proposed new rule would modify the MGWPCS rule currently found in the Administrative Rules of Montana.

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

16.20.914 GENERAL PERMITS (1) Unless clearly superceded by the following subsections, the MPDES rules of sub-chapter 9, and the MGWPCS rules of sub-chapter 10, chapter 20, Title 16, ARM, shall apply to general MPDES and MGWPCS permits.

(2) The department may issue general permits for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.59:

(a) Cofferdams or other construction dewatering discharges;

(b) Groundwater pump test discharges;

(c) Fish farms;

(d) Placer mining operations;

(e) Suction dredge operations using suction intakes no larger than 4" in diameter;

(f) Oil well produced water discharges for beneficial use;

(g) Animal feedlots;

(h) Common facultative sewage lagoons;

(i) Sand and gravel mining and processing operations;

(j) mobile oil and gas drilling wastewater treatment units.

(3) Although general MPDES and MGWPCS permits may be issued for a category of point sources located throughout the state, they may also be restricted to more limited geographical areas.

(4) Prior to issuing a general MPDES or MGWPCS permit, the department shall prepare a public notice which includes the equivalent of information listed in 40 CFR 124.10(d)(1) and shall publish the same as follows:

(a) Prior to publication, notice to the U.S. Environmental Protection Agency;

(b) Direct mailing of notice to the Water Pollution Control Advisory Council and to any persons who may be affected by the proposed general permit;

(c) Publication of notice in a daily newspaper in Helena and in other daily newspapers of general circulation in the state or affected area;

(d) After publication, allowance for a 30-day comment period as provided in 16.20.905(6), (7)(a) through (c), (8), (9), (10), and 16.20.912(2), and 16.20.913, and in 16.20.1014(5) through (8), 16.20.1020(2) and 16.20.1021.

(5) A person owning or proposing to operate a point source who wishes to operate under a general MPDES or MGWPCS permit must complete a standard MPDES OR MGWPCS application form available from the department. The department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the general MPDES or MGWPCS permit or shall notify the applicant that the source does not qualify for authorization under a general MPDES or MGWPCS permit, citing one or more of the following reasons as the basis for denial:

(a) The specific source applying for authorization appears unable to comply with the requirements listed in 16.20.905(2)(a) through (g) or 16.20.1014(2);

(b) The discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the general MPDES or MGWPCS permit;

(c) An MPDES or MGWPCS permit or authorization for the same operation has previously been denied or revoked.

(d) The discharge sought to be authorized under a general MPDES or MGWPCS permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101 et seq, MCA;

(e) The point source will be located in an area of unique ecological or recreational significance. Such determination shall be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC 1274.

(6) Where authorization to operate under a general MPDES or MGWPCS permit is denied, the department shall proceed, unless the application is withdrawn, to process the application as an individual MPDES or MGWPCS permit under ARM 16.20.904 and 16.20.905 or 16.20.1013 through 16.20.1016.

(7) Every general MPDES or MGWPCS permit shall have a fixed term not to exceed 5 years. Except as provided in subsection (10) of this rule, every authorization to operate under a general MPDES or MGWPCS permit shall expire at the same time the general MPDES or MGWPCS permit expires.

(8) Where authorization to operate under a general MPDES or MGWPCS permit is issued to a point source covered by an individual MPDES or MGWPCS permit, the department shall, upon issuance of the authorization to operate under the general MPDES or MGWPCS permit, terminate the individual MPDES or MGWPCS permit.

(9) Any person authorized or eligible to operate under a general MPDES or MGWPCS permit may at any time apply for an individual MPDES or MGWPCS permit according to the procedure in ARM 16.20.904 or 16.20.1013. Upon issuance of the individual MPDES or MGWPCS permit, the department shall terminate any general MPDES or MGWPCS permit authorization held by such person.

(10) The department, on its own initiative or upon the petition of any interested person, may modify, suspend, or revoke in whole or in part a general MPDES or MGWPCS permit or an authorization to operate under a general MPDES or MGWPCS permit during its term in accordance with the provisions of sections 75-5-403 and 75-5-404, MCA, for cause, including but not limited to:

(a) An adoption of or change in applicable effluent standards, federal regulations, or applicable water quality standards such that the terms and conditions of the general MPDES or MGWPCS permit no longer are adequate to insure compliance with federal or state requirements;

(b) The approval of a water quality management plan containing requirements applicable to point sources covered in the general MPDES or MGWPCS permit;

(c) Determination by the department that the discharge from any authorized source is a significant contributor to pollution as determined by the factors set forth in 40 CFR 122.57(c)(2); or

(d) A change in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to a source or to a category of sources;

(e) Occurrence of one or more of the circumstances listed in ARM 16.20.907(1)(c) or 16.20.1015(3).

(11) The department may reissue an authorization to operate under a general MPDES or MGWPCS permit provided that the requirements for reissuance of MPDES or MGWPCS permits specified in ARM 16.20.911(1) through (3) or 16.20.1018(1) through (3) have been met.

(12) The department shall maintain and make available to the public a register of all sources and activities authorized to operate under each general MPDES or MGWPCS permit including the location of such sources and activities and shall provide copies of such registers upon request.

(13) For purposes of this rule, the board hereby adopts and incorporates by reference:

(a) 40 Code of Federal Regulations (CFR) section 122.59 which sets forth criteria for selecting categories of point sources appropriate for general permitting;

(b) 40 CFR section 124.10(d)(1) which sets forth minimum contents of public notices;

(c) 40 CFR section 122.57(c)(2) which sets forth criteria for determining when a point source is considered a "significant contributor of pollution";

(d) 16 United States Code (USC) section 1132 (wilderness area designations); and

(e) 16 USC section 1274 (wild and scenic river designations).

(f) Administrative Rules of Montana (ARM) sections 16.20.905(6), (7)(a) through (c), (8), (9), and ~~(11)~~ (10) and 16.20.1014(5) through (8) which set forth minimum requirements for the receipt of public comment and requests for public hearing;

(g) ARM sections 16.20.912(2), ~~and~~ 16.20.913, 16.20.1020(2) and 16.20.1021, which set forth minimum requirements for the circulation and distribution of public notices;

(h) ARM sections 16.20.905(2)(a) through (g) and 16.20.1014(2), which set forth the criteria used to make tentative determinations on MPDES and MGWPCS permit applications;

(i) ARM section 16.20.907(1)(c) and 16.20.1015(3), which ~~sets~~ set forth various ~~ground~~ grounds for suspension, modification or revocation of MPDES or MGWPCS permits;

(j) ARM sections 16.20.911(1) through (3) and 16.20.1018 (1) through (3) which set forth procedures for requesting reissuance of MPDES or MGPWCS permits.

Copies of these laws and regulations may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTH: 75-5-201, 75-5-401, MCA IMP: 75-5-401, MCA

RULE I GENERAL PERMITS (to be codified as 16.20.1022) The department may issue general MGWPCS permits pursuant to the provisions of ARM 16.20.914.

AUTH: 75-5-201, 75-5-401, MCA IMP: 75-5-401, MCA

5. The Board is proposing this amendment to 16.20.914 and adoption of the new rule because there presently is no mechanism for the Department to review and grant timely approval for disposal from a mobile treatment unit for oilfield wastes. Consequently, many of these wastes end up untreated and buried in the field where they pose a greater

long-term threat of pollution. Also, up to the present time, there has been no mechanism to grant any general permit under MGWPCS.

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 Abraham Horpestad, Water Quality Bureau, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than November 16, 1984.

6. Allen Chronister, Department of Justice, Office of the Attorney General, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the board to make the proposed rules is based on Sections 75-5-201 and 75-5-401 and the rules implement Section 75-5-401, MCA.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State October 1, 1984

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

In the matter of the adoption of a rule pertaining to when eligibility of Food Stamps begins.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A RULE PERTAINING TO THE FOOD STAMP PROGRAM.

TO: All Interested Persons

1. On November 1, 1984, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of a rule pertaining to when eligibility of Food Stamps begins.

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

RULE I FOOD STAMPS, DETERMINING WHEN ELIGIBILITY BEGINS (1) Eligibility starts with the date a household applies for benefits. However, when a new member joins a participating household the eligibility of the new member will begin the month after the presence of the new member is reported. If the presence of the new member will result in increased benefits to the household, increased benefits cannot be issued for the month in which the new member is reported. However, increased benefits shall be issued:

(a) effective with the month after the new member is reported; and

(b) if the new member is reported after the 20th of the month and it is too late to include the new member in the next month's issuance then a supplemental benefit for the new member will be issued by the 10th day of the next month.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 and 53-2-306 MCA

3. The department has designed the eligibility system for the Food Stamp Program so that it is operated in the same manner as the Aid to Dependent Children Program as much as possible. At the present time the procedure for both programs provide that a new member will be added to a household in the month the presence of the new member is reported. The Food and Nutrition Service of the Department of Agriculture has reviewed the system for adding a member and found that it is not in compliance with the way this federal agency wants the Food Stamp Program to operate. The Department has received letters dated July 27, 1984, and September 4, 1984, which mandate that procedures be changed. The Department is therefore proposing a rule which provides that a new member in a household which is participating in the Food Stamp Program

will become eligible for benefits the month after their presence is reported.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than November 8, 1984.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 1, 1984.

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

In the matter of the adoption of new rules under sub-chapter 7 governing the municipal finance consolidation act program	))))	NOTICE OF ADOPTION OF NEW RULES GOVERNING THE MUNICIPAL FINANCE CONSOLIDATION ACT PROGRAM, RULES 8.97.701 through 8.97.713

TO: All Interested Persons:

1. On May 31, 1984, the Montana Economic Development Board published a notice of public hearing on the above-stated rules at pages 862-868, 1984 Montana Administrative Register, issue number 10.

On June 21, 1984 at 10:00 a.m., the public hearing was 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. No persons appeared at the hearing to present testimony or comments. In addition, no correspondence was received offering testimony or comments.

3. The board is therefore adopting the rules as proposed with some changes, based on the advice of the board's bond counsel, which will read as follows: (new matter underlined, deleted matter interlined) (It should be noted that several rules have been placed in different order than the original notice. It was felt that by rearranging these rules, the content would be more clear to the user.)

Rule I now 8.97.701 DEFINITIONS is adopted with the following change:

"8.97.701 DEFINITIONS (1) ...

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

(a) 'bond ~~anticipation note~~' means any bond or note issued by ~~a local government unit pursuant to 17-5-1609, MCA~~ the board pursuant to Title 17, Chapter 5, Part 16, MCA.

Rule II is adopted as 8.97.702 with the following change.

"8.97.702 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 -- hereinafter referred to as the municipal bond program."

Rule III is adopted as proposed as rule 8.97.703. Rule IV Bonding Limit is not being adopted as it is covered by statute.

A new rule is being adopted as 8.97.704 which will read as follows:

"8.97.704 THE MUNICIPAL BOND PROGRAM (1) The board shall periodically determine the demand for financing under the municipal bond program by surveying local government units or such other methods as may be deemed appropriate by the board.

(2) The board may periodically authorize, issue, and offer for sale its bonds in amounts determined by the board to be sufficient to purchase obligations of local government units whose applications have been approved by the board pursuant to these rules to pay costs of issuance of such bonds and to fund the reserve fund provided for in ARM 8.97.711.

(3) Separate bonds may be issued to finance the purchase of different types of obligations. "

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

The board is adopting this rule to clarify the means by which the Municipal Bond Program will operate (i.e. that the board will sell its bonds, first, and then use the proceeds to purchase obligations of local government units.

Rule V is being adopted as 8.97.706 with the following changes:

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

(a) ...

(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;

(e) the chronological order of receipt of a completed application; and

(f) compliance with other eligibility requirements set forth herein; and

(g) such other information as the board may deem necessary.

(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."

Rule VI is being adopted as 8.97.705 with the following changes:

"8.97.705 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) ...

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

(d) ...

(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 general description of the character of and value of the property to be assessed and the nature of the ownership thereof~~.~~, and a map of the proposed district boundaries;

(g) a general financial statement of the governmental unit; and

(h) any other information deemed necessary by the board to evaluate the application in accordance with these rules.

(2) The administrator shall review the application to determine whether the application is complete under ~~rule VI~~ ARM 8.97.705 (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~~ ARM 8.97.706.

~~(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~~ ARM 8.97.706, 8.97.707 and 8.97.708."

Rule VII is being adopted as 8.97.707 with the following change:

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

(1) If the board has proceeds available from the issuance of its bonds as described in ARM 8.97.704, it ~~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) If the board does not have proceeds available from the issuance of its bonds as described in ARM 8.97.705, it~~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).~~"

Rule VIII and rule XI are being combined as one rule, 8.97.709 with the following changes:

"8.97.709 TERMS, INTEREST RATES, FEES, AND CHARGES (1) The terms of obligations shall be established by the board at the time of purchase, unless established at the time the agreements contemplated by ARM 8.97.708 are executed.

(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 operativeing and administrative expenses and to provide a reasonable allowance for losses that may be incurred in the program, including funding the reserve fund.

~~8.97.718 FEES AND CHARGES (1)~~ (3) ...

~~(4) (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, trustee and paying agent fees, 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~~ 8.97.709 (2), or may be allocated among local government units participating in the program and charged to them directly."

Rules IX, and X are being adopted as 8.97.710 and 8.97.711 with no changes.

Rule XII is not being adopted. Rule 8.97.708 Financial Requirement and Covenants is being adopted instead and will read as follows:

"8.97.708 FINANCIAL REQUIREMENTS AND COVENANTS In agreeing to purchase obligations the board may prescribe covenants and undertakings consistent with state law to be contained in the resolution of the governmental unit authorizing the issuance of the obligations."

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

The board is substituting the rule to allow the board greater flexibility in attaching financial requirements and covenants to its financings. In addition, the board felt it was improper to single out special improvement district bonds for establishing underwriting requirements by rule.

MONTANA ECONOMIC DEVELOPMENT BOARD
D. PATRICK McKITTRICK,
CHAIRMAN

BY: Isabelle Pistelak
ISABELLE PISTELAK,
ADMINISTRATOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 1, 1984.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 10.55.302 Certificates	)	NOTICE OF AMENDMENT OF RULE 10.55.302 CERTIFICATES

TO: All Interested Persons.

1. On August 30, 1984, the Board of Public Education published notice of a proposed amendment to rule 10.55.302, concerning Certificates on pages 871 and 1161 of the 1984 Montana Administrative Register, issue number 10 and 16 respectively. The effective date of this rule will be September 1, 1985.

2. The Board has amended the rule as proposed.

3. Until now, first aid could be administered by coaches without standardized and current preparation and training. The lack of standardization and currency might result in the risk that an injured athlete received improper first aid treatment resulting in permanent injury. The amendment is proposed to eliminate the risk by requiring standardized and current training.

4. No comments or testimony were received.

5. The authority for the rule is sections 20-2-121, 20-2-114, and 20-4-102, MCA, and the rule implements sections 20-4-101 and 20-4-102, MCA.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Linda Vaw D. Jm

Certified to the Secretary of State October 1, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 10.57.106 Life Certificates	)))	NOTICE OF AMENDMENT OF RULE 10.57.106 LIFE CERTIFICATES

TO: All Interested Persons.

1. On August 30, 1984, the Board of Public Education published notice of a proposed amendment to rule 10.57.106 concerning life certificates on pages 1166 and 1167 of the 1984 Montana Administrative Register, issue number 16. The effective date of this rule will be September 1, 1985.

2. The Board has amended the rule with the following changes:

10.57.106 LIFE CERTIFICATES (1) Life certificates issued under former provisions (the last were issued in 1954) remain in force, ~~until the holder reaches age 70~~ unless revoked for cause.

3. No comments or testimony were received.

4. The authority for the rule is section 20-4-102, MCA and the rule implements section 20-4-102, MCA.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Sheila Van Dyck

Certified to the Secretary of State October 1, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 10.62.101, 10.62.102 and 10.62.103, Certification of Fire Services Training School.	)))))	NOTICE OF REPEAL OF RULES FOR CERTIFICATION OF FIRE SERVICES TRAINING SCHOOL.

TO: All Interested Persons.

1. On June 16, 1984, the Board of Public Education published notice of the proposed repeal of rules 10.62.101, 10.62.102, and 10.62.103, concerning Fire Department Instructor Certification and Certification of Firefighter I, Certified Firefighter II, and Advanced Certified Firefighter III on page 760 of the 1984 Montana Administrative Register, issue number 9.

2. The Board has repealed the rule 10.62.101, 10.62.102, and 10.62.103 in its entirety, found on pages 10-951, 10-952, and 10-953 of the Administrative Rules of Montana.

3. No comments or testimony were received.

4. The authority for the rule is section 20-31-102 and 20-31-201, MCA, and the rule implements section 20-31-102, MCA.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Theodora Van Dyke

Certified to the Secretary of State October 1, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF RULE
of rule 10.68.101 relating to) 10.68.101 RELATING TO THE
the Educational Media Library) EDUCATIONAL MEDIA LIBRARY

TO: All Interested Persons.

1. On August 30, 1984 the Board of Public Education published notice of a proposed adoption of a rule concerning educational media library on page 1168 of the 1984 Montana Administrative Register, issue number 16. The effective date of this rule will be September 1, 1985.

2. The board has adopted the rule with the following changes:

10.68.101 EDUCATIONAL MEDIA LIBRARY (1) remains the same.

(2) ~~In the management of the Educational Media Library;~~ For purposes of Board approval or disapproval of the selection of educational media, the Superintendent of Public Instruction shall prepare, subject to Board approval;

(a) Definition of scope and purpose of the library

(b) Establishment of selection criteria

(c) Procedures for acquisition, circulation, replacement and withdrawal.

(3) and (4) remain the same.

3. In response to Administrative Code Committee staff comment concerning the management of the media program, the board has re-worded the beginning of sub-section (2) to refer to 20-2-121(8) MCA.

4. The authority for the rule is section 20-2-121(8), MCA, and the rule implements section 20-2-121(8) MCA.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Theodore Van Dyken

Certified to the Secretary of State October 1, 1984

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12.5.401 relating to oil and gas leasing policy for department-controlled lands	))))	NOTICE OF AMENDMENT OF RULE 12.5.401 - OIL AND GAS LEASING POLICY FOR DEPARTMENT CONTROLLED LANDS

TO: All Interested Persons:

1. On May 17, 1984, the Montana Fish and Game Commission published a Notice of Proposed Amendment of Rule 12.5.401 - Oil and Gas Leasing Policy for Department Controlled Lands on pages 762-764 in the Montana Administrative register; on July 26, 1984, the Department published a notice of public hearing to be held on August 28, 1984, at page 1084 of the Montana Administrative Register.

2. The public hearing was held on August 28, 1984, in the Fish and Game Commission Room at 1420 East 6th Avenue, Helena, Montana. There were 11 persons present for the hearing. Written requests for a public hearing had been received from several oil and gas companies prior to the setting of the hearing.

3. The Commission has adopted the proposed rule with the following changes:

12.5.401 OIL AND GAS LEASING POLICY FOR DEPARTMENT-CONTROLLED LANDS (1) The purpose of resource management on lands controlled by the department of Fish, Wildlife and Parks is to maintain and enhance, when possible, conditions for fish, wildlife, and recreational activities. Oil and gas leasing if accommodated, will be consistent with that purpose. If leasing occurs, minimizing damage or losses will not be the only consideration. Improving wildlife's potential and recreational opportunities should also be considered. Oil and gas leasing must be consistent with state and federal laws and regulations governing the use of lands acquired with federal funds. Derived income, if any, should be clearly and directly routed into programs benefiting the fish, wildlife and recreational resource.

(2) The following procedures apply only to those lands where the department owns both the mineral rights and the surface rights. Applications for seismic permits or for oil and gas leasing on lands controlled by the department will be considered on an individual basis according to the following procedures:

(a) Applications for seismic exploration permit for activities that cause no surface disturbance other than that necessary for seismic tests must be accompanied by a

preliminary environmental review prepared by the department in accordance with the rules and regulations promulgated under the Montana Environmental Policy Act and adopted by the department. A permit, if granted by the department and approved by the commission, will be only for the purpose described in the preliminary environmental review and shall imply no right to engage in any activity not described in that review and will be for a specified period of time.

(b) "Surface occupancy" leases for oil and gas development activity will not be issued, unless they are required to protect against asset depletion by drainage. In these instances, the lessee shall bear all costs incurred by the department in the monitoring of exploration and development. Monitoring requirements will be detailed in the Environmental Impact Statement prepared prior to lease issuance.

(c) On parcels of 640 acres or less, it shall be the general policy of the commission to issue "no surface occupancy" leases after the preparation of a preliminary environmental review. These leases may be reviewed and modified by the commission at the request of the lessee.

(d) In most instances, tracts larger than 640 acres have been purchased with federal funds. On those areas, the issuance of a lease may be in conflict with the purpose for which the area was purchased. If a preliminary environmental review indicates that the area could be potentially leased then an environmental impact statement shall be prepared. The cost of the environmental impact statement shall be born by the applicant, except when the original applicant is not the successful bidder for the lease. In that case, the successful bidder will be required to reimburse the original applicant for impact statement costs. Upon review of the environmental impact statement, the commission may or may not grant the lease.

(e) The method of issuance of a lease shall be at the discretion of the commission, and may involve competitive bidding, direct negotiation, or any other method deemed appropriate.

4. The following comments concerning the rules were received and the Commission makes the following response:

Comment: A number of commenters objected to the language in subsection (1) which noted that the purpose of the resource management on the lands controlled by the Department of Fish, wildlife and Parks is to maintain and enhance conditions for fish, wildlife and recreational activity. The concern was that enhancement by an oil and gas lessee may not be possible in all cases.

Response: The Department has amended the rule to reflect that it is the Department's purpose to maintain and enhance,

when possible, conditions for fish, wildlife and recreational activities on Department controlled lands.

Comment: A number of commenters criticized the Department rule for failing to define what costs and monitoring requirements would be imposed upon lessees.

Response: The Commission has changed the proposed rule to require that monitoring requirements be detailed in the environmental impact statement prior to lease issuance.

Comment: The comment was made that the Commission should have the flexibility to review a no-surface-occupancy lease after it has been issued in order to possibly modify the lease.

Response: The Commission has included language which will allow a no-surface-occupancy lease to be reviewed and modified by the Commission at the request of the lessee.

Comment: A number of commenters complained that the applicant who has borne the cost of the environmental impact statement may not be the ultimate lessee, and that it isn't fair to require the unsuccessful applicant to foot the bill for the environmental impact statement.

Response: The Commission has amended the proposed rule to indicate that when the original applicant is not the successful bidder for a lease, the successful bidder will be required to reimburse the original applicant for any impact statement. The Commission has included language in this section which contemplates that the Commission may decide not to grant a lease after review of an environmental impact statement.

Comment: A number of commenters complained that the rules would be unduly burdensome upon the oil and gas industry and would discourage exploration on department lands.

Response: The Department's primary obligation and the management of its lands is to manage them for the protection of fish, wildlife, and recreational activities. Other uses of the land are secondary and should not interfere with the department's primary management objectives. Also, the amount of department lands in which the department has any mineral rights at all is less than 80,000 acres and therefore does not constitute a significant part of the total mineral lands in Montana.

SPENCER S. HEGSTAD, Chairman
Montana Fish and Game Commission

Certified to Secretary of State October 1, 1984.

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

In the matter of the amendment of Rules 46.10.308, 46.10.317, 46.10.402, 46.10.403, 46.10.406, 46.10.506, 46.10.508, 46.10.510, 46.10.512, 46.10.513 and 46.12.3401 pertaining to eligibility requirements regarding the AFDC Program	)))))))))	NOTICE OF THE AMENDMENT OF RULES 46.10.308, 46.10.317, 46.10.402, 46.10.403, 46.10.406, 46.10.506, 46.10.508, 46.10.510, 46.10.512, 46.10.513 AND 46.12.3401 PERTAINING TO ELIGIBILITY REQUIREMENTS REGARDING THE AFDC PROGRAM

TO: All Interested Persons

1. On August 30, 1984, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.10.308, 46.10.317, 46.10.402, 46.10.403, 46.10.406, 46.10.506, 46.10.508, 46.10.510, 46.10.512, 46.10.513 and 46.12.3401 pertaining to eligibility requirements regarding the AFDC Program at page 1170 of the 1984 Montana Administrative Register, issue number 16.

2. The department has amended Rules 46.10.308, 46.10.317, 46.10.402, 46.10.506, 46.10.508, 46.10.510, 46.10.512 and 46.10.513 as proposed.

3. The department has amended Rules 46.10.403, 46.10.406 and 46.12.3401 as proposed with the following changes:

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsections (1) through (3) remain the same as proposed.

(a) If net monthly income in excess of the net monthly income standard is discovered after the month of receipt, the ineligibility period may begin ~~with the month of discovery provided that the recipient has a history of consistent cooperation in reporting monthly income. If the recipient has not been consistent in reporting income, the period of ineligibility begins with the month that the excess income is received and a recovery of overpayment will be initiated.~~ as late as the corresponding payment month. The period of ineligibility will be recalculated with respect to the remaining months in any one or more of the following cases:

(i) an event occurs which, had the assistance unit been receiving aid, would have changed the amount of aid payable; OR

~~(ii) the income received has become unavailable to the assistance unit for reasons beyond their control; or~~

(ii) ~~(iii)~~ the assistance unit incurs, becomes responsible for, and pays medical expenses in a month of ineligibility.

Subsections (3)(b) through (4)(b) remain the same as proposed.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

46.10.406 PROPERTY RESOURCES Subsections (1) through (4)(e) remain the same.

(f) One burial space for each family member and not more than ~~$1,000~~ $1,500 designated for burial arrangements for each member.

(g) Real property the family is making a good faith effort to sell, but only for six months and only if they agree to use the proceeds from the sale to repay the department for any AFDC benefits received. The remainder is considered a resource.

(~~f~~h) Any other property resources not excluded in (4)(a) through (4)(e) of this section not to exceed $1,000 in equity value.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsections (1) through (2)(f) remain the same as proposed.

(g) individuals whose AFDC is terminated solely because of increased income from employment;

(i) these individuals will continue to receive medicaid for nine months, providing:

(A) The family lost AFDC eligibility because of the loss of $30 and one-third disregard;

(B) Any private insurance coverage is disclosed;

(C) Application is made within 6 months from the date regulations implementing this provision become final;

(D) Eligibility for AFDC would continue if the $30 and one-third disregard were applied;

~~(f) individuals whose AFDC is terminated solely because of increased income from employment;~~

~~(i) these individuals will continue to receive medicaid for four further months, providing:~~

~~(A)~~ tThe assistance unit received AFDC in any three or more months during the six-month period preceding the month of AFDC closure; and

~~(B)~~ aAt least one member of the assistance unit is employed throughout the four nine month period of continued medicaid coverage;

(ii) this ~~four~~ nine month period of continued medicaid coverage begins:

(A) the month following the date of AFDC closure; or

(B) if AFDC eligibility ends prior to the month of closure, with the first month in which AFDC is erroneously paid.

Subsections (3) through (4) remain the same as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

4. The Deficit Reduction Act of 1984 (H.R. 4120) was passed by Congress and signed by the President on July 18, 1984. A significant number of provisions affect AFDC and Medicaid. The proposed rules reflect the regulations presented in the Act and are effective October 12, 1984. The following changes were also found necessary:

a) 46.10.403(3)(a)(ii) was deleted and is held without prejudice pending further clarification.

b) 46.10.406(f) has been changed to not more than $1,500 designated for burial arrangement. The rule is now consistent with Medicaid rules.

c) 46.12.3401(E) and (F) were deleted as they are not provisions of the Act.

The new regulations generally serve to clarify or to expand services provided under these assistance programs.

5. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 1, 1984.

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

In the matter of the adoption of Rule 46.13.402A and the amendment of Rules 46.13.106, 46.13.205, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402 and 46.13.403 pertaining to the low income energy assistance program	))))))))	NOTICE OF THE ADOPTION OF RULE 46.13.402A AND THE AMENDMENT OF RULES 46.13.106, 46.13.205, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402 AND 46.13.403 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On August 16, 1984, the Department of Social and Rehabilitation Services published notice of the proposed adoption of a rule and the amendment of Rules 46.13.106, 46.13.205, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402, and 46.13.403 pertaining to the low income energy assistance program at page 1113 of the 1984 Montana Administrative Register, issue number 15.

2. The department has adopted Rule 46.13.402A REVERSION OF BENEFITS, as proposed.

3. The department has amended Rules 46.13.106, 46.13.205, 46.13.303, 46.13.304, and 46.13.305 as proposed.

4. The department has amended Rules 46.13.401, 46.13.402 and 46.13.403 as proposed with the following changes:

46.13.401 BENEFIT AWARD MATRICES Subsections (1) through (2) remain as proposed except for the following matrix for LC District X which has been corrected as follows:

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
	334		285	425	298	362
	~~314~~	216	~~267~~	~~389~~	~~271~~	~~330~~
Natural Gas	~~322~~	~~208~~	~~274~~	~~409~~	~~287~~	~~348~~
	702	491	597	858	600	729
Fuel Oil	~~715~~	~~500~~	~~600~~	~~874~~	~~612~~	~~743~~
	597	418	508	730	511	621
Propane	~~731~~	~~512~~	~~621~~	~~894~~	~~625~~	~~759~~
Electricity	529	370	450	646	452	549
M.P.C.	~~557~~	~~390~~	~~473~~	~~680~~	~~476~~	~~578~~
Electricity	677	474	575	827	579	703
P.P.L.	~~645~~	~~451~~	~~548~~	~~788~~	~~551~~	~~670~~
	244	171	208	305	214	260
*Coal (tons)	~~3/195~~	~~3/195~~	~~3/195~~	~~4/245~~	~~4/245~~	~~4/245~~
	265	185	225	331	232	281
*Wood (cords)	~~3/195~~	~~3/195~~	~~3/195~~	~~4/245~~	~~4/245~~	~~4/245~~

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
	494	346	420	562	393	478
Natural Gas	~~475~~	~~332~~	~~404~~	~~540~~	~~378~~	~~459~~
	976	683	829	1093	765	929
Fuel Oil	~~994~~	~~696~~	~~845~~	~~1113~~	~~779~~	~~946~~
	830	581	705	929	650	790
Propane	~~1015~~	~~711~~	~~863~~	~~1137~~	~~796~~	~~967~~
Electricity	734	514	624	823	576	699
M.P.C.	~~773~~	~~541~~	~~657~~	~~866~~	~~606~~	~~736~~
Electricity	940	658	799	1053	737	895
P.P.L.	~~895~~	~~627~~	~~761~~	~~1002~~	~~762~~	~~852~~
	366	257	312	428	299	363
*Coal (tons)	~~5/325~~	~~5/325~~	~~5/325~~	~~6/390~~	~~6/390~~	~~6/390~~
	397	278	337	463	324	394
*Wood (cords)	~~5/325~~	~~5/325~~	~~5/325~~	~~6/390~~	~~6/390~~	~~6/390~~

~~*-Value of coal/wood may not exceed dollar value indicated~~

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

46.13.402 DETERMINING BENEFIT AWARD (1) For applications filed during the period October 1~~,~~ 1983 through April 30~~,~~ 1984, households found eligible will receive the full amount of their applicable matrix if available.

(a) Households found eligible may apply all or a portion of their benefit award for conversion to a less costly heating fuel.

(b) Eligible households who convert to a less costly heating fuel must disclaim any right to additional program benefits for the current heating season regardless of change of address or any other circumstance except emergencies as defined in ARM 46.13.501.

Subsection (2) remains the same.

(3) BENEFIT AWARD WILL BE PRORATED FOR APPLICANTS NEW TO THE STATE FROM THE DATE OF RESIDENCY FOR THE REMAINDER OF THE HEATING SEASON.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

46.13.403 METHOD OF PAYMENT Subsections (1) through (2)(b) remain as proposed.

(c) ~~Application for new benefits will not be processed until all benefits attributable to previous program awards are used.~~ NO INDIVIDUAL'S APPLICATION FOR NEW BENEFITS WILL BE PROCESSED UNTIL BENEFITS ATTRIBUTABLE TO PREVIOUS YEARS' PROGRAM AWARDS TOTAL LESS THAN $100.

Subsections (2)(d) through (4) remain as proposed.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

5. The department has thoroughly considered all verbal and written commentary recieved:

COMMENT: New residents should only receive benefits for the period they have lived in the state.

RESPONSE: ARM 46.13.402 has been amended by the addition of subsection (3) which provides benefits for residents for the period they actually have lived in the state.

COMMENT: The department should not change the income determination period from the prior 6 months to the prior 12 months. Instead it should use a period not longer than the previous 3 months.

RESPONSE: LIEAP attempts to provide help to those most in need. For most persons, the review committees felt, the prior 12 months was the best indication of income. A period shorter than that could make eligible persons who, historically, are

only seasonably employed. If they applied at the right time of the year, their true income would not be considered and they would receive benefits which, more justifiably, should have been available for other low-income families.

There are several categorically eligible households who, by definition, are eligible without regard to any previous income period. Households who have recently become poor and who have little hope of altering their situation in the near future will probably be on one of these programs (e.g. General Assistance) and are LIEAP eligible.

COMMENT: Benefits awarded from a previous year's program should not affect determination in the current year.

RESPONSE: Prior benefits do not affect eligibility determination. A household is eligible or ineligible without regard to its prior year's benefit. What we require is that previous benefits be used before additional benefits are made available. This recommendation was proposed and endorsed by both the local contractor review teams and the Advisory Council. However, we agree that, to an extent, this discourages conservation and, in some cases, could be administratively difficult to manage. The final rule disregards up to $100 from prior years' awards.

COMMENT: The department's proposal that a person moving or changing fuel type will have his benefits reverted to the department discriminates against persons who move after the program closes and contravenes a recent fair hearing.

RESPONSE: It was precisely because of the above mentioned fair hearing that the rule is adopted. Although the proposal was felt to be existing department policy, the fair hearing was lost because there was not explicit language so authorizing the department.

LIEAP is intended to be a winter heating program (October - April). Persons who move during that period can re-apply for assistance and have new benefits issued on a pro rata basis of the percentage of the remaining heating season. When the heating season is over the pro rata share is zero. Persons moving after the heating season, if allowed to re-apply, would be eligible for zero benefits.

COMMENT: LIEAP emergency funds should be used to meet hook-up and termination costs.

RESPONSE: An emergency, by definition, is an unforeseen combination of circumstances calling for immediate action. The emergency funds are so used. While hook-ups and terminations are certainly significant events, they generally develop over a long time period and are not unforeseen.

COMMENT: The presumption that any credit balance is attributable to LIEAP will be difficult for a client to disprove.

RESPONSE: Extensive documentation is neither requested nor desired. Any reasonable proof that all, or a portion, of a client's credit balance is not attributable to LIEAP is sufficient (i.e., cancelled checks or statement from the utility company).

COMMENT: For clients residing in federally subsidized Section 8 housing, LIEAP pays the difference between that which the Section 8 program allows and the applicable LIEAP matrix. A provision of the federal LIEAP law is that LIEAP cannot be considered as income or resources for any federal or state programs and the full LIEAP matrix should be provided.

RESPONSE: There is no contention that the Section 8 allowance is affected by the receipt of LIEAP benefits. Further, the LIEAP benefit is not counted as either income or resource. What is being counted is the amount of Section 8 benefits being realized by a LIEAP client.

COMMENT: The rules should be amended to allow recipients of general assistance to have their LIEAP benefits paid in monthly installments and, where applicable, directly to landlords.

RESPONSE: Under the present rule, landlords, in certain circumstances, can act as vendors. The department does not agree that general assistance recipients should be treated differently than other LIEAP clients. It also does not appear to be administratively more efficient to make up to seven payments as compared to two payments described in the present rule.

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 1, 1984.

VOLUME NO. 40 OPINION NO. 67

APPROPRIATIONS - Funds pledged as security for university revenue bond obligations;
BOARD OF REGENTS - Authority over funds pledged as security for university revenue bond obligations;
MONTANA CODE ANNOTATED - Sections 20-25-301, 20-25-302, 20-25-401, 20-25-402, 20-25-403;
MONTANA CONSTITUTION - Article II, section 31; article X, section 9(2)(a) and (d).

HELD: The Legislature may not appropriate, by bill, revenue generated from sources pledged to cover university system revenue bond requirements, when the revenue obtained from these sources exceeds the bond requirements.

18 September 1984

Judy Rippingale
Legislative Fiscal Analyst
State Capitol
Helena MT 59620

Dear Ms. Rippingale:

You have asked my opinion on the following questions:

1. May the Legislature appropriate, by bill, revenue generated from sources pledged to cover university system revenue bond requirements, when the revenue generated from these sources exceeds the bond requirements?

2. If so, must the "excess revenue" be appropriated for a particular purpose?

For reasons I have outlined below, I conclude that the Legislature does not have the authority to make such appropriations; consequently I do not find it necessary to reach your second question.

The Board of Regents (frequently referred to hereinafter as "the Regents") is given specific statutory authority to issue bonds. § 20-25-402(3), MCA. Debts created by these bonds are not charged against the State as general obligations. § 20-25-403, MCA. The Board of Regents may pledge various sources of university system income (rather than tax revenues) as security for the bonds it issues. Pursuant to section 20-25-402(4), MCA, the Board may:

> (4) pledge for the payment of the...principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:
> (a) the net income received from rents, board, or both in housing, food service, and other facilities;
> (b) receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and
> (c) other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property; receipts from athletic and other contests, exhibitions, and performances; and collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;
>
> ....

Your question concerns whether the State Legislature may appropriate some or all of the funds from these pledged sources whenever the income generated from them exceeds the bond obligations such as payment of principal and income. Since your request concerns the effect of future and therefore hypothetical legislative action, this opinion is advisory in nature.

The Board of Regents is given broad authority to manage the university system's sources of revenue. Section 20-25-301(9), MCA, gives the Regents "general control of all receipts and disbursements of the system." Section

20-25-302, MCA, expressly grants the Regents the power to purchase, construct, equip, or improve land, buildings, and other facilities and to devote the revenues from the operation of these facilities, including any fees collected therefrom, to debt service and reserves, "so far as such revenues have not been previously obligated for the purposes." § 20-25-302(3), MCA. Section 20-25-401, MCA, authorizes the Regents to establish and collect student building fees and pledge the receipts to various uses such as the acquisition and construction of recreation facilities, or for principal and interest payable on revenue bonds issued to finance such facilities. Finally, the Regents are authorized by law to use bond revenues to refund or retire outstanding bonds. § 20-25-402(7), MCA. For these purposes the statute specifically permits the Regents to use:

> revenues or other funds on hand, in excess of the amount pledged by resolutions or indentures authorizing outstanding bonds.... Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be... invested and disbursed as provided in subsection 7(c) hereof to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

§ 20-25-402(7)(d), MCA.

The terms of the bonds are also instructive. The indenture provisions which you attached to your opinion request include language concerning how the funds in the various bond reserve accounts may be used. For example, section 5.04 of a 1965 Eastern Montana College indenture calls for the creation of a "Revenue Fund" for the purpose of covering current expenses associated with the bond project. The balance of the Revenue Fund must be used to complete the deposit in the "Revenue Bond Fund" and to restore any deficiencies therein. "[T]he Regents may use any remaining balance in the Revenue Fund not needed for current expenses and payable" to redeem outstanding bonds, acquire or improve facilities, or "for any other purpose for which the funds pertaining to the College may lawfully be expended." Section 4.03 of a 1971 Montana State University indenture provides for revenue derived from the bond project to be deposited in a "Bond Account" to be used for payment of principal and

interest. Excess funds are placed in a "Reserve Account," the use of which is within the Regents' discretion. Pursuant to section 4.04, the "Reserve Account" funds are also to be used to make up any deficiencies that may arise in the "Bond Account."

I have cited the aforementioned statutory and indenture provisions in order to emphasize the broad legal responsibility given to the Board of Regents with respect to the use of the university system's income, as well as the Regents' contractual obligations, which may not be impaired by state law. Mont. Const. art. II, § 31. Were the Legislature to appropriate those funds from pledged sources that are "in excess" of the amount necessary to cover bond requirements (assuming it would be possible to determine this amount), the practical effect would be to eliminate the Regents' authority to use pledged revenue in the variety of ways set forth in the law. The options given the Regents in expending pledged revenues, e.g., to redeem revenue bonds, or to improve university facilities, would be meaningless if the funds to be used were always unavailable because they had been appropriated by the Legislature.

Moreover, the terms of the bonds which require that certain amounts of funds be maintained in reserve accounts contemplate that a minimum of funds be kept in reserve. It is entirely possible that responsible fiscal management would necessitate an increased reserve at some future time. If the Regents are foreclosed this option because the "excess" pledged revenue is appropriated by the Legislature for other purposes, then the actions of the Legislature would prevent the Regents from exercising duties which the Legislature has imposed upon them by statute. The possible need for an increased reserve also suggests that it may never be possible to precisely calculate the amount of any "excess" pledged funds.

Additional support for my conclusion is found in the case law. The Board of Regents' powers over the financial affairs of the university system were addressed in Board of Regents of Higher Education v. Judge, 168 Mont. 433 at 446, 543 P.2d 1323 at 1331, 1334 (1975), wherein the Court emphasized that the Legislature's power to appropriate does not extend to private funds received by state government which are restricted by law, trust agreement or contract. Since

these types of funds may be pledged by the Regents as security for revenue bonds pursuant to section 20-25-402(4), MCA, the above-cited portion of the Court's opinion in Board of Regents is relevant to your question. So also is the decision in State ex rel. Veeder v. State Board of Education, 97 Mont. 121 at 133, 33 P.2d 510 at 521-22 (1934), in which the Court, interpreting statutes currently in effect, found that the Regents' predecessor, the State Board of Education, had express power to manage and control the business and finances of the university system and had implied power to do all things necessary and proper to the exercise of those general powers. See § 20-25-301(8) and (9), MCA. See also State ex rel. Blume v. State Board of Education, 97 Mont. 371 at 378-79, 34 P.2d 515 at 518-19 (1934) (the State Board of Education was vested with exclusive power to receive and control the funds derived from land grants). At the heart of the Court's decisions are the provisions of the 1972 Montana Constitution and its 1889 predecessor, concerning the Board of Regents' general control over the university system. Article X, section 9(2)(a) and (d), of the 1972 Constitution provides:

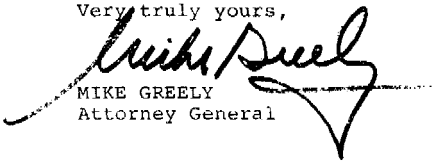
> (2)(a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.
>
> ....
>
> (d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

In summary, the statutes and the terms of the bonds themselves give the Board of Regents control over the use of the sources of income that are pledged as security for university system revenue bonds, regardless of whether the income "exceeds" the bond obligations. Appropriation of these funds by the Legislature would contravene the legal authority to control the funds that is vested in the Board of Regents.

THEREFORE, IT IS MY OPINION:

The Legislature may not appropriate, by bill, revenue generated from sources pledged to cover university system revenue bond requirements, when the revenue operated from these sources exceeds the bond requirements.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 68

DEPARTMENT OF ADMINISTRATION - Authority to classify state librarian and historical society director;
EMPLOYEES, PUBLIC - Classification of state librarian and historical society director;
HISTORICAL SOCIETY - Classification of director;
SALARIES - Classification of state librarian and historical society director;
STATE LIBRARY - Classification of state librarian;
STATUTORY CONSTRUCTION - Repeal by implication;
MONTANA CODE ANNOTATED - Sections 2-18-103, 2-18-104, 2-18-201, 2-18-205, 2-18-207, 22-1-102, 22-3-107.

HELD: The Classification Bureau of the Department of Administration has the authority to classify and to establish the grade level for the positions of state librarian and director of the Montana Historical Society.

21 September 1984

Henry McClernan, Chairman
Montana State Library Commission
151 East Sixth Avenue
Helena MT 59620

George O'Connor, President
Montana Historical Society
Board of Trustees
225 North Roberts
Veteran's Memorial Building
Helena MT 59620

Gentlemen:

You have requested my opinion on the following questions:

1. Does the Board of Trustees of the Montana Historical Society or the Classification Bureau of the Department of Administration have the authority to set the salary

for the director of the Montana Historical Society?

2. Does the Montana State Library Commission or the Classification Bureau of the Department of Administration have the authority to set the salary for the state librarian?

Your questions have arisen due to an apparent conflict between statutes in Title 2, MCA, governing classification and pay of state employees and statutes in Title 22, MCA, giving authority to your respective boards to set salaries for the positions in question.

Specifically, section 22-3-107, MCA, delineates the powers and duties of the board of trustees of the Montana Historical Society, including the power "(3) to appoint a director, fix his salary, and prescribe his duties and responsibilities." Similarly, the State Library Commission is given the following authority by section 22-1-102, MCA:

> Librarian and assistants. The commission shall employ as its executive officer a librarian, who is a graduate of an accredited library school and is not a member of the commission, for such compensation as the commission considers adequate. The executive officer shall perform the duties assigned by the commission and serve at the will of the commission. The commission may also employ such other assistants as are required for the performance of the commission's work. In addition to their salaries while on commission business, the librarian and assistants shall be allowed their travel expenses, as provided for in 2-18-501 through 2-18-503, as amended.

The authority to hire and to set the compensation for the librarian was added to the statute in 1945. With regard to the Historical Society director, the power to appoint and to set salary was given to the board in 1963. None of the amendments to sections 22-3-107 and 22-1-102, MCA, have affected the provisions regarding salary.

On the other hand, the 1973 Legislature enacted a comprehensive plan for classification and pay of all State employees, based upon the principle of similar pay for similar work. Title 2, ch. 18, pt. 2, MCA. The Department of Administration was directed to "develop a personnel classification plan for all state positions and classes of positions in state service...except those exempt in 2-18-103 and 2-18-104." § 2-18-201, MCA. (Emphasis added.) Neither the state librarian nor the director of the Historical Society are included within the exemptions of sections 2-18-103 and 2-18-104, MCA. It is my understanding that the two positions in question have been classified by the Department of Administration since the implementation of the classification and pay plan in 1975.

According to the principles of statutory construction, statutes dealing with the same subject matter are to be construed together and harmonized if possible. Crist v. Segna, 38 St. Rptr. 150, 622 P.2d 1028 (1981). However, I find that an irreconcilable conflict does exist between sections 22-3-107 and 22-1-102, MCA, and the Classification and Pay Plan Act. The Classification and Pay Plan Act is general legislation concerning the salaries of State employees, while sections 22-3-107 and 22-1-102, MCA, are special statutes specifically dealing with the salaries of the two positions in question. On the other hand, the Classification and Pay Plan Act was enacted later than the two special statutes. In this situation, two conflicting principles of statutory construction lead to two opposite conclusions. The Montana Supreme Court recently encountered a similar situation in Dolan v. School District No. 10, 38 St. Rptr. 1903, 636 P.2d 825 (1981). An irreconcilable conflict existed between the Human Rights Act and a special statute establishing a mandatory retirement age for teachers and principals. The Court noted that the Human Rights Act was general legislation enacted later than the mandatory retirement statute, and further stated:

> [T]his Court also acknowledges the existence of conflicting rules of statutory construction with regard to this particular situation. Generally, where statutes irreconcilably conflict, the latest statute supersedes the prior enactment. State v. State Board of Land Commissioners (1960), 137 Mont. 510, 353 P.2d

> 331. However, where general statutes and special statutes are involved, special statutes normally prevail over general. Teamsters, Etc., Local 45 v. Montana Liquor Con. Bd. (1970), 155 Mont. 300, 471 P.2d 541.

636 P.2d at 828. In determining which rule of construction to apply, the Court relied upon the following quotation from State ex rel. State Aeronautics Commission v. Board of Examiners, 121 Mont. 402, 417, 194 P.2d 633, 641 (1948):

> [A] later statute general in its terms and not expressly repealing a prior special or specific statute, will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both, or unless there is something in the general law or in the course of legislation upon its subject matter that makes it manifest that the legislature contemplated and intended a repeal.

The Court found that the Legislature manifested its intention that the Human Rights Act impliedly repealed the mandatory retirement provision. The Human Rights Act contains broad antidiscrimination provisions and very explicit and limited exceptions. I am guided by the Dolan opinion in resolving your questions.

When the Legislature directed the Department of Administration to develop a classification and pay plan, its purpose was to eliminate the salary inequities which had existed prior to 1973 among the various State agencies. Each agency had its own salary plan and State employees performing similar work were not receiving similar pay. The goal of the Legislature was to establish uniformity and equity in pay. This intent was expressed by the Legislature in House Joint Resolution 37, 1975 Mont. Laws, which integrated the salary schedules into the classification plan and provided:

> This wage and salary plan is in lieu of any other plan or system of pay increases for classified state employees.

Further, the Classification Act provides that the Department of Administration is to have exclusive authority for classification and pay of nonexempted positions. See §§ 2-18-205, 2-18-207, MCA. The list of exemptions contained in section 2-18-103, MCA, has been amended numerous times in order to exempt positions which were originally encompassed by the classification system. It is clear that the Legislature views section 2-18-103, MCA, as an exclusive list of specific exemptions. If a position is not exempted by sections 2-18-103 or 2-18-104, MCA, then the intent of the Legislature is to include the position in the classification plan.

While I recognize that repeals by implication are not favored, Kuchan v. Harvey, 179 Mont. 7, 585 P.2d 1298 (1978), it would frustrate the purpose of the Classification and Pay Plan Act to hold that the positions of state librarian and director of the Montana Historical Society are exempt from classification where the Legislature has not expressly approved such exemption in section 2-18-103, MCA. Therefore, I conclude that the provisions of sections 22-3-107(3) and 22-1-102, MCA, which authorize the Board of Trustees of the Historical Society and the State Library Commission to set salary are superseded by the Classification and Pay Act, Title 2, ch. 18, pts. 1-3, MCA. The board and the commission retain the authority to hire and to assign duties and responsibilities.

THEREFORE, IT IS MY OPINION:

> The Classification Bureau of the Department of Administration has the authority to classify and to establish the grade level for the positions of state librarian and director of the Montana Historical Society.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 69

COURT, DISTRICT - Payment of public school tuition for youths placed outside their school districts of residence;
DEPARTMENT OF INSTITUTIONS - Payment of public school tuition for youths placed outside their school districts of residence;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Payment of public school tuition for youths placed outside their school districts of residence;
PROBATION, YOUTH - Payment of public school tuition for youths placed outside their school districts of residence;
SUPERINTENDENT OF PUBLIC INSTRUCTION - Payment of public school tuition for youths placed outside their school districts of residence;
TUITION, PUBLIC SCHOOL - Payment of public school tuition for youths placed outside their school districts of residence;
YOUTH IN NEED OF CARE OR SUPERVISION - Payment of public school tuition for youths placed outside their school districts of residence;
MONTANA CODE ANNOTATED - Sections 1-1-215, 1-2-107, Title 20, 40-4-101, 40-8-125, 41-4-101.

HELD: In most cases where a child attends school outside his or her school district of residence, financial responsibility will fall in one of three places: the parents or guardians, the school district of residence, or the sending agency. The particular circumstances of the placement will determine who is financially responsible for school tuition.

24 September 1984

Richard A. Simonton
Dawson County Attorney
Dawson County Courthouse
Glendive MT 59330

Dear Mr. Simonton:

You have asked my opinion on three questions:

1. If a local welfare department has legal custody by a temporary or permanent order for placement of a minor child and places that child with foster parents outside the school district of residence or outside the state, who is responsible for payment of tuition?

2. Who is responsible for payment of out-of-state tuition when a local student, either by choice or court order, attends high school out of state?

3. Who is responsible for payment of tuition on behalf of a student residing out of his school district who has been accepted by the local welfare department and attends school within the local district?

You have told me that your questions concern youths in need of care or supervision, not youths who require special education or are otherwise developmentally disabled. I am aware that there are cases where children fall into both categories, but I must limit this opinion to manageable size. For several reasons, this is a complex area of the law. Therefore, I will start with an overview generally applicable to all of your questions.

Montana law requires local school district trustees to admit to a district school all qualified children between the ages of 6 and 19 years who are residents of the district. § 20-5-101, MCA. State law also authorizes trustees to admit nonresident children under the tuition provisions of Title 20, MCA. Section 20-5-304, MCA, requires that school officials determine the residence of elementary school children according to section 1-1-215, MCA. I interpret this rule as applying to high school students as well. Unless a contrary intention plainly appears, statutes relating to the same subject matter should be interpreted consistently. § 1-2-107, MCA; State ex rel. McHale v. Ayers, 111 Mont. 1, 105 P.2d 686 (1940).

We must look to section 1-1-215, MCA, for guidance in determining the residence of a child. That statute holds in pertinent part:

> Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:
>
> ....
>
> (4) The residence of his parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom he customarily resides is the residence of the unmarried minor child. In case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor child.
>
> (5) The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

§ 1-1-215, MCA. The residence of an unmarried minor child is the residence of his (natural or adoptive) parents.

As I said above, section 20-5-101, MCA, gives qualified children an absolute right to be admitted to school in the school district of their residence. Admission to a school outside the child's district of residence is usually discretionary. This discretion is qualified by several factors listed in sections 20-5-301 to 303, and 20-5-312 to 313, MCA.

When children attend schools outside their districts of residence, various statutes establish who pays the costs of this education. If parents are willing to pay these tuition costs, sections 20-5-303 and 20-5-313(2), MCA, apply. These statutes give parents broad rights to send their children to school in other school districts at the parents' expense.

If the parents cannot or will not pay tuition, and still wish that a child attend school outside his or her district of residence, a tuition agreement is needed.

Under a tuition agreement, the trustees of a child's school district of residence agree to pay the child's tuition. Tuition agreements must be approved pursuant to section 20-5-301(2), MCA, in the case of elementary school students, and pursuant to section 20-5-311(1), MCA, in the case of high school students. Other specific conditions for tuition agreements are enumerated in sections 20-5-301 to 302, and 20-5-311, MCA.

The Interstate Compact on the Placement of Children, certified at section 41-4-101, MCA, is also generally applicable. If a child is placed pursuant to this Compact, the "sending agency" has continuing financial responsibility for the child during the period of placement. § 41-4-101, MCA, art. V(1). The Compact defines "sending agency" as follows:

> "[S]ending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

§ 41-4-101, MCA, art. II(2). In cases of disagreement, the appropriate district court determines who is the "sending agency."

Finally, I note that the 1983 Session of the Montana Legislature had under consideration "An Act To Transfer, From The Office Of Public Instruction To The Department Of Social And Rehabilitation Services, The Fiscal Responsibility For The Educational Costs Of Youths Who Are Ordered To Out-Of-District Educational Programs Under The Youth Court Act Or Child Abuse, Neglect, And Dependency Laws." (H.B. 25, 48th Leg.) Since the Legislature did not pass this act, I presume it was their intent to authorize current practices in this area. Bottomly v. Ford, 117 Mont. 160, 168, 157 P.2d 108 (1945). Therefore, it has been my aim throughout this opinion to interpret the law in light of current practices. I now turn to your specific questions.

1. If a local welfare department has legal custody by a temporary or permanent order

for placement of a minor child and places that child with foster parents outside the school district of residence or outside the state, who is responsible for payment of tuition?

As noted above, a child's residence is the residence of the natural parents in almost all cases. The only exceptions would be for a child who was married, emancipated, or subject to a final decree of adoption. §§ 1-1-215, 40-8-125, MCA. It is my opinion that legal custody in a local welfare department by either temporary or permanent order does not change the child's residence from that of his or her natural parents.

When, due to court order, an elementary school pupil attends school outside his or her district of residence but within the state, Montana law requires that the tuition agreement be approved. § 20-5-301(3)(e), MCA. I interpret the Legislature's intent to be that high school students would also be treated this way. See § 20-5-311, MCA. So, if a child were placed within the state but outside his or her school district of residence, tuition would have to be paid by the district of residence. §§ 20-5-301(3)(e), 20-5-311, MCA.

If the placement of the child is outside the state, financial responsibility for school costs would rest with the sending agency under the Interstate Compact on the Placement of Children, § 41-4-101, MCA, art. V(1).

2. Who is responsible for payment of out of state tuition when a local student, either by choice or court order, attends high school out of state?

If the student is voluntarily attending school outside the state, responsibility for payment of tuition depends on the existence of a valid tuition agreement. If no valid tuition agreement exists, the child's parents or guardians are responsible for tuition costs. § 20-5-313(2), MCA. If a valid tuition agreement exists, the child's school district of residence is responsible for tuition costs. §§ 20-5-311, 20-5-314, MCA. Special note should be taken of section 20-5-314, MCA, and the Superintendent of Public Instruction should be consulted about the existence of a reciprocal tuition agreement with an adjoining state.

If the student attends high school out of state pursuant to court order, the sending agency is responsible for tuition costs under the Interstate Compact on the Placement of Children, § 40-4-101, MCA, art. V(1). In the event of disagreement, the district court determines who is the sending agency for purposes of the Interstate Compact.

3. Who is responsible for payment of tuition on behalf of a student residing out of his school district who has been accepted by the local welfare department and attends school within the local district?

Your question speaks of a child "who has been accepted by the local welfare department;" I take this to mean that the child has been placed by court order.

If the child's school district of residence is within Montana, the district of the child's residence is responsible for tuition costs under an approved tuition agreement. (See 1 above.) If the child's school district of residence is not in Montana, and the other state is a party to the Interstate Compact on the Placement of Children, the sending agency is responsible for tuition costs. If the child's district of residence is in a state not party to the Interstate Compact on the Placement of Children, responsibility for tuition costs would be a matter of the other state's local law.

THEREFORE, IT IS MY OPINION:

In most cases where a child attends school outside his or her school district of residence, financial responsibility will fall in one of three places: the parents or guardians, the school district of residence, or the sending agency. The particular circumstances of the placement will determine who is financially responsible for school tuition.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 70

MOTOR VEHICLES, LICENSE AND REGISTRATION - Light vehicle license fees;
MOTOR VEHICLES, LICENSE AND REGISTRATION - Titling and registration of vehicles in inventory of motor vehicle dealers;
TAXATION - Taxes and fees on motor vehicles to be paid by dealers who apply for title and registration;
MONTANA CODE ANNOTATED - Sections 1-2-107, 15-8-202, 61-3-201, 61-3-202, 61-3-303, 61-3-317, 61-3-322, 61-3-501, 61-3-503, 61-3-531 to 61-3-534, 61-4-111.

HELD: A motor vehicle dealer may not obtain a "title only" from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle.

25 September 1984

J. Fred Bourdeau
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Bourdeau:

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

> May a motor vehicle dealer obtain a "title only" from the Registrar's Bureau on a motor vehicle that is part of his inventory, without registering the vehicle and without paying any taxes or fees that may be due on the vehicle?

Your letter informs me that some motor vehicle dealers in Montana have applied for and received a "title only" on the vehicles in their inventory, purportedly to enable them to provide the purchaser of the vehicle with a title at the time of purchase. You also indicate that in some Montana counties, when application is made for a "title only," any taxes or fees on the vehicle are not

paid, as the vehicle is not actually "registered or reregistered" at that time. See § 61-3-501(1), MCA.

Analysis of this issue requires an examination of the statutes dealing with titling and registering of motor vehicles. Section 61-3-201, MCA, establishes the procedure for obtaining a new certificate of ownership (title) upon a transfer of an interest in a motor vehicle:

> (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of the certificate, and his signature shall be acknowledged before a notary public.
>
> (2) Within 20 calendar days thereafter, the transferee shall forward both the endorsed certificate of ownership and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the division. No certificate of ownership or certificate of registration may be issued by the division until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction....
>
> ....

To obtain a title on a new motor vehicle, or on a transferred motor vehicle on which there exists an out-of-state title and/or registration certificate, the transferee must complete an application for title on a separate form and submit it to the county treasurer. Section 61-3-202(1), MCA, provides for issuance of a title by the Registrar's Bureau:

> (1) Upon completion of the application for certificate of ownership, on forms furnished by the division, the county treasurer shall forward one copy of the application to the division, which shall enter the information

> contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership....

An owner of a motor vehicle operated on the public highways of this state is required to file an application for registration or reregistration of the vehicle in the office of the county treasurer for the county in which the vehicle is owned or taxable. § 61-3-303, MCA. In 1981, the Montana Legislature devised a "light vehicle license fee" system to replace the former ad valorem tax system for most automobiles and light trucks. Under the new system, trucks having a rated capacity of three-quarters of a ton or less and automobiles are no longer subject to assessment for the purpose of determining personal property taxes. As to these types of vehicles, a "license fee," computed on the basis of the age and weight of the vehicle, is imposed in lieu of a property tax. See §§ 15-8-202, 61-3-503(2), 61-3-531 to 534, MCA. Motor vehicles other than those specifically exempted are subject to assessment for the purpose of personal property taxation, pursuant to sections 15-8-202 and 61-3-503, MCA. Included in this group would be motorcycles and trucks having a rated capacity in excess of three-quarters of a ton. In any event, the statutes clearly require all taxes and/or fees due on a vehicle to be paid at the time application is made for registration or reregistration of the vehicle. §§ 61-3-303(2), 61-3-501(1), MCA.

Motor vehicle dealers, however, are not subject to the same statutory requirements concerning titling and registration of vehicles that are a part of their inventory. Section 61-4-111(1), MCA, provides:

> (1) The provisions of 61-3-201(2) shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle.... [Emphasis added.]

The above statute clearly exempts motor vehicle dealers from the normal requirement that the owner of a motor vehicle secure a new title and registration certificate for the vehicle, at least with respect to those vehicles that are part of the dealer's inventory. The question, therefore, is: If a dealer applies for a title on a vehicle owned by him and intended for resale, must the dealer also register the vehicle and pay the attendant taxes or fees, or may the Registrar's Bureau issue a "title only" on the vehicle? My research has disclosed that the Registrar's Bureau is not authorized to issue a "title only" to a motor vehicle dealer under the above-referenced circumstances. If a dealer applies for a title on a vehicle that is part of his inventory, despite the exemption provided to dealers by section 61-4-111(1), MCA, he must also register the vehicle and pay any taxes and fees.

The Montana statutes generally contemplate issuance of a title on a motor vehicle only if the vehicle is also registered. Under section 61-3-201, MCA, the transferee of an interest in a motor vehicle is required within 20 days to forward an endorsed certificate of ownership and a certificate of registration to the county treasurer, who forwards the documents to the Registrar's Bureau. The new owner also has 20 days to register the vehicle and pay the taxes or fees on the vehicle. §§ 61-3-303, 61-3-317, MCA.

The Registrar's Bureau is then authorized to issue a title for the vehicle, and the county treasurer is authorized to issue a certificate of registration. §§ 61-3-201, 61-3-202, 61-3-322, MCA. Under section 61-3-202(2), MCA, a new title issued by the Registrar's Bureau is required to contain the following relevant information:

> ....
>
> (c) ...the name and complete address of any holder of a perfected security interest in the registered vehicle;
>
> (d) a description of the registered vehicle, including the year built and serial number; [Emphasis added.]
>
> ....

When an interest in a motor vehicle is transferred by operation of law, or when a transfer is effected by anything other than a voluntary act of the person whose interest is transferred, a somewhat different procedure is followed. The executor, receiver, trustee, sheriff, or successor in interest of the person whose interest is transferred is required to apply directly to the Registrar's Bureau for a new title. Upon determining that the transfer is regular and that all requirements have been complied with, the Registrar's Bureau is authorized to issue a new title and the county treasurer is authorized to issue a certificate of registration to the person entitled thereto. § 61-3-201(3), MCA.

As a general proposition, no provision has been made in the statutes for issuance of a title on an unregistered vehicle under the circumstances described in your letter. If a dealer chooses to apply for a title on a vehicle that he is holding for resale, he must also register the vehicle as required by the statutes. In addition, dealers who choose to title their vehicles despite the fact that they are not required to do so are not exempt from the requirement that they pay any taxes or fees due upon registration of the vehicle. See §§ 61-3-303(2), 61-3-501(1), MCA. I find support for this conclusion in the statutes providing for assessment and registration of motor vehicles. Section 15-8-202(1), MCA, provides in pertinent part:

> ....
>
> (b) No tax may be assessed against motor vehicles subject to taxation that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.
>
> (c) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles.... [Emphasis added.]
>
> ....

Section 61-3-501, MCA, provides in relevant part:

> (1) Property taxes, new car taxes, light vehicle license fees, and fees in lieu of tax on a motor home or travel trailer must be paid on the date of registration or reregistration of the vehicle.
>
> (2) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes, light vehicle license fees, or the fee in lieu of property taxes abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes or the fee in lieu of tax due and owing on the vehicle. [Emphasis added.]

I find that the Legislature intended the same definition of the term "purchaser" to apply in sections 15-8-202(1) and 61-3-501(2), MCA. See § 1-2-107, MCA. In other words, if a dealer applies for title and registration of a motor vehicle that is a part of his inventory, he will have the same obligations as any purchaser of the vehicle and will be required to pay any taxes or fees on the vehicle.

THEREFORE, IT IS MY OPINION:

> A motor vehicle dealer may not obtain a "title only" from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 71

BRIDGES - Stream protection reporting requirements on public projects;
HEALTH AND ENVIRONMENT - Stream protection reporting requirements on public projects, work bridges;
PUBLIC PROJECTS - Stream protection reporting requirements, work bridges;
SOIL AND WATER CONSERVATION - Stream protection reporting requirements on public projects, work bridges;
MONTANA CODE ANNOTATED - Title 75, chapter 7, part 1; Title 81, chapter 5, part 5;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 15 (1977).

HELD: In accordance with the Stream Protection Act, the Department of Highways must notify the Department of Fish, Wildlife, and Parks of the construction of work bridges by private contractors on state highway projects when such bridges may or will obstruct, damage, diminish, destroy, change, modify or vary the natural existing shape and form of any stream, its banks or tributaries.

26 September 1984

Gary J. Wicks, Director
Montana Department of Highways
Highway Building
2701 Prospect
Helena MT 59620

Dear Mr. Wicks:

You have requested my opinion on the following question:

> Is a highway contractor who constructs and maintains a work bridge governed by the provisions of the Stream Protection Act or the Natural Streambed and Land Preservation Act of 1975?

According to your letter, work bridges are temporary structures built by highway contractors during the

course of construction of a highway project. The decision of whether to install work bridges is made at the discretion of the private contractor and may not be reflected on construction plans prepared by the Department of Highways.

The Natural Streambed and Land Preservation Act of 1975, §§ 75-7-101 to 124, MCA, was enacted to protect and preserve natural rivers and adjacent lands and to minimize soil erosion and sedimentation. See § 75-7-102, MCA. The act requires that "[a] person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place." § 75-7-111(1), MCA. The act defines "person" as "any natural person, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502." § 75-7-103(4), MCA. The term "supervisors" refers to conservation district boards of supervisors, grass conservation district directors, or boards of county commissioners. § 75-7-103(7), MCA. The Stream Protection Act, §§ 87-5-501 to 509, MCA, imposes reporting requirements on State agencies and political subdivisions undertaking construction projects which may affect streams:

> An agency of state government, county, municipality, or other subdivision of the state of Montana, hereafter called applicant, shall not construct, modify, operate, maintain, or fail to maintain any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction without first causing notice of such planned construction to be served upon the department on forms furnished by the department as soon as preliminary plans are completed but not less than 60 days prior to commencement of final plans for construction. Such notice shall include detailed plans and specifications of so much of said project as may or will affect any such stream in any manner specified above.

§ 87-5-502, MCA. The term "department" means the Department of Fish, Wildlife, and Parks.

The relationship of the Stream Protection Act and the Natural Streambed and Land Preservation Act was considered in 37 Op. Att'y Gen. No. 15 at 60 (1977), which states:

> It may at times be difficult to determine whether a given project is state or private, since there may be state involvement in a private project. If an agency merely authorizes a project as by issuing a permit, lease or easement, the project is still private and is covered by the Streambed Act. If, however, the project is being directed and controlled by the agency for state or public benefit then it is a state project and comes within Fish and Game Commission jurisdiction [under the Stream Protection Act].

The construction and maintenance of highways are the responsibilities of the State of Montana, through the Department of Highways, and of state political subdivisions. The building of a highway over a stream is a construction project conducted by the State or a political subdivision within the meaning of section 87-5-502, MCA. The Stream Protection Act requires that notice include "detailed plans and specifications of so much of said project as may or will" vary the natural existing shape and form of any stream or its banks. If the erection of work bridges may have such an effect, the Department of Fish, Wildlife, and Parks must accordingly be notified by the Department of Highways of the bridges' intended use.

The language and purpose of the acts support the holding in 37 Op. Att'y Gen. No. 15 that the private or public nature of a project determines which act applies. Although the two acts have similar objectives and control similar activities, the Stream Protection Act was enacted to regulate projects undertaken by governmental entities, and the Natural Streambed and Land Preservation Act was enacted to control projects not subject to the Stream Protection Act. See § 75-7-103(4), MCA. Consequently, because highway projects are governmental undertakings, all activities in such a project which may impact upon a stream are

within the jurisdiction of the Department of Fish, Wildlife, and Parks under the Stream Protection Act, including activities such as temporary work bridges erected at a private contractor's discretion and not reflected on the Department of Highways' construction plans.

THEREFORE, IT IS MY OPINION:

In accordance with the Stream Protection Act, the Department of Highways must notify the Department of Fish, Wildlife, and Parks of the construction of work bridges by private contractors on state highway projects when such bridges may or will obstruct, damage, diminish, destroy, change, modify or vary the natural existing shape and form of any stream, its banks or tributaries.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 72

COUNTY ATTORNEYS - Registration and enforcement of foreign support orders;
SUPPORT ORDERS - Registration and enforcement of foreign support orders;
UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ORDERS ACT - Registration and enforcement of foreign support orders;
MONTANA CODE ANNOTATED - Section 25-13-204, Title 40, chapter 5, part 1.

HELD: A private attorney may register and enforce a foreign support order under the Uniform Reciprocal Enforcement of Support Act in Montana; the county attorney shall represent an obligee in registration and enforcement under URESA when so requested pursuant to section 40-5-139, MCA.

27 September 1984

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Room 508
Billings MT 59101

Dear Mr. Hanser:

You have asked my opinion on a question I have phrased as follows:

> Who may register and enforce a foreign support order in Montana?

The statutes applicable to your question are contained in the Uniform Reciprocal Enforcement of Support Act. Title 40, ch. 5, pt. 1, MCA. I find no cases that speak directly to your question, either in Montana or in the many other jurisdictions that have adopted the uniform act. Nevertheless, your question can be answered by applying certain principles of statutory construction.

First, a remark about the structure of the substantive parts of the act. The primary portion of the act (§§ 40-5-112 to 135, MCA) deals with the establishment in one state (the responding state--usually the state of the obligor's residence) that a duty of support exists under the law of another state (the initiating state--usually the state of the obligee's residence). In proceedings under this part of the act, a five-step procedure must be followed:

1. Identification of the support duty;
2. Filing the petition;
3. Initiating court review and location of obligor;
4. The responding court hearing;
5. The issuance of the support order.

Fox, The Uniform Reciprocal Enforcement of Support Act, 4 Fam. L. Rep. 4017.

The act also provides for the much simpler procedure of registration (§§ 40-5-136 to 141, MCA) "[i]f the duty of support is based on a foreign support order." § 40-5-136, MCA. Your question relates solely to the registration procedure, but the five-step procedure will be referred to, as the two procedures are structured similarly.

Section 40-5-137, MCA, states who may register a foreign support order:

> The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

An attorney or other agent may register a foreign support order for an obligee. § 28-10-105, MCA; Clinton v. Miller, 124 Mont. 463, 474, 226 P.2d 487 (1951). In certain cases, a county attorney may be requested to represent an obligee:

> (1) If this state is acting either as a rendering or a registering state, the prosecuting attorney, upon the request of the court, a state department of social and rehabilitation services, a county commissioner, or other local welfare official,

> shall represent the obligee in proceeding under this part.
>
> (2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

§ 40-5-139, MCA. The obligee is responsible for registering a foreign support order unless the local prosecutor has been requested or ordered to do it. This procedure parallels the procedure an obligee uses to establish a foreign duty of support. §§ 40-5-112 to 113, MCA.

Once a foreign support order is registered, it has the same effect as a support order of this state. § 40-5-141, MCA. If the obligor does not voluntarily comply with the support order, the order may be enforced through court proceedings.

The statutes on enforcement of registered support orders appear to be ambiguous. Section 40-5-140(3), MCA, appears to place the duty of enforcement on the prosecuting attorney:

> (3) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

On the other hand, section 40-5-141(1), MCA, implies that a private right of enforcement exists:

> (1) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or

staying as a support order of this state and may be enforced and satisfied in like manner.

See also Title 25, ch. 13, MCA, Execution of Judgment.

If possible, statutes must be read in harmony and effect given to each. State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 525 P.2d 564 (1974). In light of that rule, I interpret the prosecuting attorney's duty of enforcement under section 40-5-140(3), MCA, as applying to those cases where he had been requested to represent an obligee under section 40-5-139, MCA. In cases where the obligee had registered the foreign support order and the prosecuting attorney was not requested to represent the obligee, enforcement could proceed by execution by the obligee under sections 40-5-141(1) and 25-13-204, MCA.

THEREFORE, IT IS MY OPINION:

A private attorney may register and enforce a foreign support order under the Uniform Reciprocal Enforcement of Support Act in Montana; the county attorney shall represent an obligee in registration and enforcement under URESA when so requested pursuant to section 40-5-139, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 73

COUNTIES - State assumption of public assistance and protective service functions;
COUNTIES - State reimbursement to counties for transportation cost of mentally ill patients;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - State assumption of public assistance and protective service functions;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - State reimbursement of transportation cost of mentally ill patients;
MENTALLY ILL PERSONS - State reimbursement to counties for transportation costs of mentally ill patients;
PUBLIC ASSISTANCE - State assumption of public assistance and protective service functions;
MONTANA CODE ANNOTATED - Title 53, chapter 2, part 8, Title 53, chapter 21, part 1.

HELD: After State assumption pursuant to section 53-2-811, MCA, the Department of Social and Rehabilitation Services is not responsible for the expenses associated with transfer of seriously mentally ill patients involuntarily committed to the Montana State Hospital.

1 October 1984

Mike McGrath
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena MT 59623

Dear Mr. McGrath:

You have requested my opinion concerning the following question:

> Following the transfer of Lewis and Clark County's public assistance and protective service functions to the Department of Social and Rehabilitation Services under section 53-2-811, MCA, does Lewis and Clark County remain responsible for the payment of

transportation costs incurred when persons are involuntarily committed to the Montana State Hospital at Warm Springs?

Resolution of your question turns on the nature of commitment proceedings under sections 53-21-101 to 190, MCA, and the scope of "state assumption" under sections 53-2-801 to 822, MCA.

The Montana statute dealing with the treatment of the "seriously mentally ill" reflects most basically "the concern of the Legislature that procedural safeguards be placed around the power of the State to commit a person for serious mental illness." In re Shennum, 41 St. Rptr. 1148, 1151, ___ P.2d ___ (1984). Extensive procedures thus precede involuntary commitment. See §§ 53-21-114 to 126, MCA. Seriously mentally ill patients are, moreover, accorded various substantive rights once admitted either voluntarily or involuntarily. See § 53-21-141, MCA (general specification of patient rights); § 53-21-143, MCA (right not to be fingerprinted unless otherwise required by law); § 53-21-144, MCA (restrictions on the taking and use of patient photographs); § 53-21-145, MCA (restrictions on medication use); § 53-21-146, MCA (restriction on physical restraints or isolation of patients); §§ 53-21-147 to 148, MCA (prohibition against nonconsensual experimental research or hazardous treatment). The statute further imposes an affirmative duty upon the Department of Institutions to provide transitional treatment following release from involuntary hospitalization. § 53-21-185, MCA. Indigent patients when either conditionally released or finally discharged from a mental health facility must be treated like any other patient under laws relating to public assistance. §§ 53-21-186, 53-21-188, MCA.

Sections 53-21-101 to 190, MCA, comprehensively regulate State interaction with the seriously mentally ill. A reflection of the breadth of such regulation is the involvement at various points of the Department of Institutions, the Mental Disabilities Board of Visitors, county attorneys and district courts. See, e.g., § 53-21-104, MCA (responsibilities of the Mental Disabilities Board); § 53-21-106, MCA (requiring Department of Institutions to certify "professional persons" in connection with treatment of the seriously mentally ill); § 53-21-114(1), MCA (requiring county

attorney to inform involuntarily detained or examined persons of constitutional rights within three days of detention or examination); § 53-21-121, MCA (county attorney's duties in connection with filing petition for commitment); § 53-21-129, MCA (county attorney's duties in connection with emergency detention); § 53-21-116, MCA (district court's obligation to appoint counsel if person alleged to be seriously mentally ill unrepresented); § 53-21-122, MCA (district court's obligation to determine probable cause when petition for commitment filed); and § 53-21-127, MCA (district court's dispositional obligations). The statute also requires public provision of various costs and expenses associated with the involuntary commitment of voluntarily admitted patients (§ 53-21-113(1), MCA); costs related to the transportation of voluntarily admitted persons (§ 53-21-113(2), MCA); expenses arising from legal representation, "professional person" examinations and witness fees during involuntary commitment proceedings and subsequent hearings (§§ 53-21-118, 53-21-128, MCA); and other costs associated with involuntary commitment, including transportation (§ 53-21-132, MCA). Patient reimbursement for these expenses is not required except (1) when a county welfare department has expended transportation costs in connection with transfer of a voluntarily admitted person to a mental health facility where protective proceedings under Title 72, chapter 5 have been or will be commenced, and (2) with respect to any medical, psychological or other mental health treatment, a contractual obligation on the part of a third party exists to pay for such treatment. With the exception of the costs required to be paid by the county welfare department under section 53-21-113(2), MCA, all other costs must be borne by the county of residence. The only apparent reason for this distinction is that, while the transportation costs payable under section 53-21-113(2), MCA, relate only to voluntarily admitted patients, the other expenses derive from involuntary commitment or related procedures.

Consequently, as a general matter, the provisions in sections 53-21-101 to 190, MCA, are unrelated to county welfare department functions. They are instead concerned with establishing procedures which will protect persons alleged to be, or adjudicated as, seriously mentally ill from unjustified deprivations of liberty. Indeed, the only substantive statutory

involvement of a county welfare department, aside from the transportation expense responsibility under section 53-21-113(2), MCA, arises after conditional release or final discharge, and then, only in connection with ordinary public assistance duties. The other county of residence required payments arise from involuntary commitment or associated proceedings. The statute accordingly reflects a legislative determination that the county of residence assume responsibility for the costs attendant to involuntary commitment procedures involving the seriously mentally ill.

The provisions dealing with state assumption of public assistance and protective services responsibilities from counties were enacted during the 1983 legislative session. Section 53-2-811(1), MCA, permits counties to transfer to the Department of Social and Rehabilitation Services "[a]ll authority granted to the board of county commissioners to establish and operate a public assistance program and provide protective services for children and adults pursuant to Titles 41 and 53." This transfer is termed "state assumption" which is defined in section 53-2-802(7), MCA, as "the transfer to the department [of Social and Rehabilitation Services] for the county by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-307 and public assistance and protective services provided by the county department [of public welfare] pursuant to Titles 41 and 53." Read together, these provisions indicate that the Department of Social and Rehabilitation Services is required, when so requested by a county, to assume only the statutory responsibilities of the county welfare department.

It is thus clear that, by virtue of State assumption under section 53-2-811, MCA, the Department of Social and Rehabilitation Services is not responsible for those duties which do not statutorily attach to county welfare departments. A careful review of Title 53, chapter 21 indicates that the Legislature has allocated the costs of involuntary commitment proceedings to the county of residence and that the county welfare departments have no statutorily mandated involvement in those proceedings. Consequently, State assumption has not released counties from their responsibility for transportation expenses under section 53-21-132(1), MCA.

THEREFORE, IT IS MY OPINION:

After State assumption pursuant to section 53-2-811, MCA, the Department of Social and Rehabilitation Services is not responsible for the expenses associated with transfer of seriously mentally ill patients involuntarily committed to the Montana State Hospital.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a 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 Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

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 June 30, 1984. This table includes those rules adopted during the period July 1, 1984 through September 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 June 30, 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 1984 Montana Administrative Registers.

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