

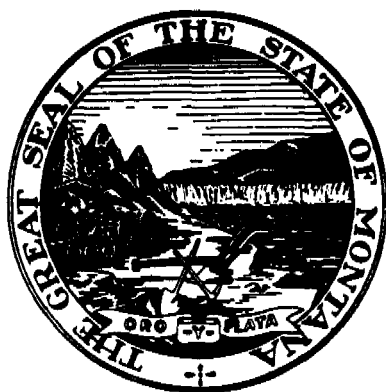
RESERVE
FFM
9035
1973
-A045a

RESERVE

MONTANA ADMINISTRATIVE REGISTER

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-11-2011 BY 60322 UCBAW

1984 ISSUE NO. 3
FEBRUARY 16, 1984
PAGES 283-349



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

TABLE OF CONTENTS

NOTICE SECTION

Page Number

COMMERCE, Department of, Title 8

8-6-11 (Architects) Notice of Proposed Amendment
- Fee Schedule. No Public Hearing Contemplated. 283-284

8-12-7 (Chiropractors) Notice of Proposed
Amendment - Applications, Educational Requirements -
Renewals - Continuing Education Requirements. No
Public Hearing Contemplated. 285-286

8-22-29 (Horse Racing) Notice of Public
Hearing on Proposed Amendment - Licenses Issued for
Conducting Pari-Mutuel Wagering on Horse Race Meetings
- Veterinarian: Official or Track. 287-289

8-22-30 (Horse Racing) Notice of Proposed
Amendment - General Requirements, Preference. No
Public Hearing Contemplated. 290-291

8-79-18 (Milk Control Bureau) Notice of Proposed
Amendment - Licensee Assessments. No Public
Hearing Contemplated. 292-293

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-401 Notice of Adoption of an Amendment to
a Federal Agency Rule Incorporated by Reference -
Food Stamp Program. No Public Hearing Contemplated. 294-295

46-2-402 Notice of Public Hearing on Proposed
Adoption, Amendment and Repeal - Rehabilitative
and Visual Services. 296-319

RULE SECTIONCOMMERCE, Department of, Title 8

AMD (Horse Racing) Institution of Proceedings by
Petition - Definitions - Licenses Issued for
Conducting Pari-Mutuel Wagering on Horse
Race Meetings - Annual License Fees - Stewards
Jockeys - Apprentices - Duties of the Licensee 320-322

HIGHWAYS, Department of, Title 18

AMD Forms for Utility Occupancy of Highway Right
of Way 323

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

NEW EMERG (Board of Oil and Gas Conservation)
Workable Ignitor Systems on Wells Producing
Hydrogen Sulfide Gas 324

REVENUE, Department of, Title 42

REP Special Liquor Permits 325
AMD Determination of Proximity to a Place of
Worship or School 325-326
AMD Interquota Area Transfers of All Beverage
Licenses 326

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

NEW Licensing of Child Care Agencies 327
REP
AMD

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46,
(Continued)

AMD Medical Services; Medically Needy Income Standards	328
--	-----

INTERPRETATION SECTION

Opinions of the Attorney General

31 A city with general government powers may not establish a civil penalty and collection system for motor vehicle parking offenses.	329-332
32 City Councilmen - Conflict of Interest, Public Contracts, Subcontracts, Municipal Officials - Bidding requirements.	333-337
33 Counties - County property, lease of, Distribution of revenues from; County Commissioners; Powers, property of county, lease revenues, distribution of; - Landlord and Tenant; lease of building, county property.	338-339

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee	340
How to Use ARM and MAR	341
Accumulative Table	342-349

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ARCHITECTS

in the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.6.413 concerning) OF 8.6 413 FEE SCHEDULE
the fee schedule.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1984, the Board of Architects proposes to amend the fee schedule.

2. The amendment as proposed will change subsections (2),(3),(5) and (6) and will read as follows: (new matter underlined, deleted matter interlined)(full text of rule is located at page 8-213, Administrative Rules of Montana)

"8.6.413 FEE SCHEDULE (1) ...	
(2) Reciprocity	50-00 100.00
(3) Renewal (if paid by July 31st)	20-00 45.00
(4) Late renewal (if paid after July 31st)	50-00 85.00
(5) Original License Fee	20.00
(6) Documents; and Duplicate License; Rosters	25-00 27.00
(7) ..."	

Auth: 2-6-102, 37-1-134, 37-65-204, MCA Imp: 2-6-102, 37-1-134, 37-65-305, 306, MCA

4. Section 37-1-134, MCA, requires boards to set fees commensurate with program area costs. The board has found that the administrative costs have increased in the above program areas and has proposed to raise the fees accordingly.

5. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 15, 1984.

6. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 15, 1984.

7. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons

directly affected has been determined to be 75 based on the 750 licensees in Montana.

BOARD OF ARCHITECTS
JERRELL BALLAS, AIA
PRESIDENT

BY:


GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 6, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendments of ARM 8.12.601 con-) OF 8.12.601 APPLICATIONS,
cerning applications and 8.12.) EDUCATIONAL REQUIREMENTS,
606 concerning renewals and) and 8.12.606 RENEWALS -
continuing education.) CONTINUING EDUCATION RE-
) QUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1984, the Board of Chiropractors proposes to amend the above-stated rules.
2. The proposed amendment of 8.12.601 amends subsection (1) and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-357, Administrative Rules of Montana)

"8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS (1)

The admission to examination for licensure shall be based upon proof that the applicant has completed 2 years of college in addition to graduation from an approved chiropractic college that has status with the Council on Chiropractic Education (CCE). Transcripts from all colleges and chiropractic college diploma shall accompany the application. In addition, a certified copy of the National Board scores, Parts I & II including Physiotherapy, shall be supplied to the board prior to examination.

(2) ..."

Auth: 37-12-201, MCA Imp: 37-12-302, 303, MCA

3. The board is proposing the amendment as National Boards are giving a Part III test and the Montana board does not feel that it is necessary. Applicants take a Montana exam, which would eliminate the need for the Part III National Board. However, Montana examinations cover physiotherapy which is given under Part II of the National Boards. Physiotherapy is not taught in all schools and the board feels applicants should take the National Board exam to test the abilities and knowledge of applicants in physiotherapy. The board does not have the physiotherapy equipment available to test the applicants in a practical test.

4. The proposed amendment of 8.12.606 will amend subsection (1) and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at pages 8-358 - 8-359, Administrative Rules of Montana)

"8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

- (1) An annual renewal fee of \$50 is due on or before

September 1st of each year. The licensee must present evidence, satisfactory to the board, that they have in the year preceding the application for renewal, attended at least 10 12 hours of education from an instructor with an accredited school. Failure for a licensee to comply with this rule will constitute reason for denial of license renewal.

(2) ..."

Auth: 37-12-201, MCA Imp: 37-12-307, MCA

5. The board is proposing the amendment as most states are going to 12 hours of continuing education. The current wisdom is that 10 hours does not adequately cover a course in chiropractic education. Most courses are now given in 12 hour sessions. In Montana there are programs available to provide a total of 26 hours of continuing education without having to leave the state.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 15, 1984.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 15, 1984.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 based on the 225 licensees in Montana.

BOARD OF CHIROPRACTORS
W. PAT PARDIS, D.C.
PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 6, 1984.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 8.22.502 con-	)	ON THE PROPOSED AMENDMENT
cerning hiring of veterinary	)	OF ARM 8.22.502 LICENSES
and 8.22.612 concerning veter-	)	ISSUED FOR CONDUCTING PARI-
inarians	)	MUTUEL WAGERING ON HORSE
	)	RACE MEETINGS and 8.22.612
	)	VETERINARIAN - OFFICIAL OR
	)	TRACK

TO: All Interested Persons:

1. On March 9, 1984, at 9:00 a.m. a public hearing will be held in the downstairs conference room, 1430 9th Avenue, Helena, Montana, to consider the amendments of the above-stated rules.

2. Two separate amendments of 8.22.612 will be considered. The first two amendments listed are in response to petitions from the Missoula and Flathead County Fair Boards. The amendments proposed by the petitions will read as follows:

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARI-MUTUEL WAGERING ON HORSE RACE MEETINGS (1) ...

(1) each licensee shall employ the following officials:

- (a) ...
- (b) a veterinary surgeon in good standing and licensed to practice under the state board of veterinarians;
- (c) ..."

Auth: 23-4-104, 201, MCA Imp: 23-4-106, 201, MCA

"8.22.612 VETERINARIAN: OFFICIAL OR TRACK (1) Each licensee shall employ The board shall provide to each licensee, at board expense, a veterinary surgeon in good standing, and licensed to practice under the state board of veterinarians, and who shall be considered an official of the board and the racing association.

(2) ..."

Auth: 23-4-104, 201, MCA Imp: 23-4-106, 201, MCA

3. Petitioner, Missoula County Fair Board, is required to employ at its expense a licensed veterinarian for that period during which it is sponsoring horse racing at the Western Montana Fair. Petitioner asserts that a more efficient and cost effective method for employing official track veterinarians would be for the board to employ such veterinarians at board expense and have the veterinarian be assigned to the various fair organizations during horse racing. Petitioner contends that, by this method the board would be able to employ approximately two veterinarians to

cover all county fairs and other horse racing events within the state in a much more cost effective manner than individual licensees do now. Petitioner asserts that, if the board does not provide a veterinarian, individual licensees would have to contract with local veterinarians for such, and, therefore, under those conditions, the costs of such track veterinarian would be prohibitive. This is due to the fact that all local veterinarians are utilized during horse racing events as private practitioners and generally are not available as track veterinarians.

4. The amendment as proposed by the board will delete subsection (1) of the current rule 8.22.612 and replace it with the following language: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-656, Administrative Rules of Montana)

"8.22.612 VETERINARIAN: OFFICIAL OR TRACK (1) Each licensee shall employ a veterinary surgeon in good standing, and licensed to practice under the state board of veterinarians, and who shall be considered an official of the board and the racing association. The board shall contract with persons licensed as veterinarians pursuant to section 8.22.502 to perform the duties of veterinarians at horse racing meets. Representatives of the affected racing associations shall be entitled to participate in negotiations of contracts. Contracts shall be upon such terms as the board and the veterinarians may mutually agree and may contain differing rates of compensation based upon the experience of the veterinarian.

(2) The board shall assess each racing association as part of its annual fee prior to the start of any race meet for an amount equal to the total compensation to be paid to the veterinarians assigned by the board to the race meet. The funds shall be paid to the board by the associations in equal installments at the end of each week, or partial week of racing. The board shall maintain these funds in a separate trust account in the state treasury. The board may withdraw advances from the trust account which are sufficient to meet the requirements of the veterinarians' compensation program, but never in amounts which exceed the total of funds assessed for the program.

(3) The board shall establish a committee of at least two board members to meet at least quarterly with representatives of the track veterinarians, and discuss recommendations from the veterinarians. Such meetings may be scheduled the same day as regular board meetings or at the convenience of the board.

(2) (4) ...

Auth: 23-4-104, 201, MCA Imp: 23-4-106, 201, MCA

6. The proposed rule would in essence put the veterinarians directly in the "contractual hands" of the board and the various tracks would be billed for his services. The effect of the proposed rule is that the department will no longer assume this expense contrary to the board's own rules.

Other racing jurisdictions which do hire veterinarians directly, also tax the management for every day of running, or are permitted by their legislature to extract more than 1% of the handle. For example, California tracks which handle on a daily basis less than \$1,5000,000, pay 2% of their handle to the state. If they handle more, they pay \$30,000 per day to the state plus 7.52% of handle in excess of \$1,500,000. In New York the take-out is more than 4% for the state.

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 the Board of Horse Racing, 1424 9th Avenue, Helena, Montana 59620-0407, no later than March 15, 1984.

7. Geoffrey L. Brazier, attorney, Helena, Montana will preside over and conduct the hearing.

BOARD OF HORSE RACING
LINDA KING, CHAIRMAN

BY: 

ROBERT WOOD, STAFF ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 6, 1984.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 8.22.801 con-) OF 8.22.801 GENERAL RE-
cerning preference) QUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1984, the Board of Horse Racing proposes to amend rule 8.22.801 concerning preference.

(2) The proposed amendment will add a new subsection (65) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-679 through 8-685, Administrative Rules of Montana)

"8.22.801 GENERAL REQUIREMENTS (1)...

(65) In the event that management prefers to use a date system of preference rather than the preferred list referred to in 8.22.801 (54) then the racing secretary shall post and adhere to the following procedure. At tracks which choose to use date system, this rule will supersede those rules set down for other forms of determining preference.

(a) Horses will not be eligible to receive a date in a race until their papers are on file in the racing office.

(b) Horses entered will initially receive an entry date corresponding to the date on which they are entered.

(c) Horses that run will receive a running date corresponding to the date on which they are entered, and lose all dates previously held.

(d) Horses which scratch or are scratched must re-enter to reestablish a date.

(e) Horses on the vet's, steward's or starter's lists shall forfeit their designated date, and cannot establish a date until removed from said category.

(f) In all cases, an entry date takes preference over a running date of the same day.

(g) Horses which have established a date at a current meet will lose that preference date should they race elsewhere or demonstrate intent to race elsewhere by entering at such tracks, and must re-enter to reestablish a preference date at the current meet.

(h) Stakes races are not a part of the preference system.

(i) In no way does the claiming, ownership transfer or trainer transfer of a horse affect the preference rule.

(j) Second choices of entries in overfilled races receive no consideration and should not be given a preference date unless they have different owners.

(k) In all races, winners have preference. Maidens will receive no consideration in races other than maiden races."

Auth: 23-4-104, 201, 37-1-131, MCA Imp: 23-4-104,
201, MCA

3. Larger Montana tracks which run over 10 consecutive days in meets lasting over 20 days find the present preference system cumbersome and sometimes inequitable. However, tracks sponsoring small, 6 day or less meets cannot use the date system and must use the star system presently established. This rule merely gives all tracks a choice of preference systems.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 15, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 15, 1984.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 50 based on the 5000 licensees in Montana.

BOARD OF HORSE RACING
LINDA KING, CHAIRMAN

BY: 

ROBERT WOOD, STAFF ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 6, 1984.

DEPARTMENT OF COMMERCE
STATE OF MONTANA
BEFORE THE MILK CONTROL BUREAU

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

NO PUBLIC HEARING CONTEMPLATED

DOCKET #68-84

TO: All Interested Persons:

1. On March 29, 1984 the Department of Commerce proposes to amend Rule 8.79.301 relating to an assessment to be levied upon licensees subject to 81-23-202, MCA. The proposed amendment will become effective July 1, 1984.

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

"8.79.301 LICENSEE ASSESSMENTS

(1) Pursuant to Section 81-23-202, MCA, as amended, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the fiscal year beginning July 1, ~~1983~~ 1984, and ending June 30, ~~1984~~ 1985, are hereby levied upon the Milk Control Act licensees of this Department.

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

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

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

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

3. Interested persons are asked to note that there is no change in the amount of assessment proposed for fiscal year 1985. The purpose of the amendment is merely to change the effective dates from July 1, 1983 through June 30, 1984 to July 1, 1984 through June 30, 1985.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, no later than March 15, 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 along with any written comments he has to the above address no later than March 15, 1984.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty five (25), whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent (10%) of those persons directly affected has been determined to be 33 persons based on an estimate of 335 resident and non-resident producers, producer-distributors, and jobbers subject to this assessment.

7. The authority of the agency to make the proposed amendment is based on Section 81-23-202, MCA, and implements Section 81-23-104, MCA.

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State February 6, 1984.

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

In the matter of the adop-	)	NOTICE OF ADOPTION OF AN
tion of an amendment to a	)	AMENDMENT TO A FEDERAL
federal agency rule pertain-	)	AGENCY RULE INCORPORATED BY
ing to the food stamp pro-	)	REFERENCE IN RULE 46.11.101,
gram, Rule 46.11.101	)	FOOD STAMP PROGRAM. NO
	)	PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 48 Fed. Reg. 54951, Thursday, December 8, 1983. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program.

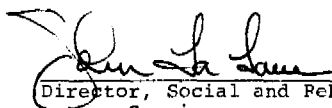
These amendments to the regulations finalize an interim rule on monthly reporting and retrospective budgeting which was published in 47 Fed. Reg. 22684, Tuesday, May 25, 1982.

The significant changes in these final rules concern the treatment of changes in household composition and the time limits for issuing benefits when a household submits a monthly report late. A copy of this general notice published in 48 Fed. Reg. 54951, Thursday, December 8, 1983, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for the adoption of the later amendment is March 19, 1984.

3. If the Department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5,393 persons based on 53,924 food stamp recipients.

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



Director, Social and Rehabilitation
Services

Certified to the Secretary of State February 6, 1984.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING ON
of rules and the amendment of	)	THE ADOPTION OF RULES AND
Rules 46.6.102, 46.6.302,	)	THE AMENDMENT OF RULES
46.6.304, 46.6.305, 46.6.306,	)	46.6.102, 46.6.302,
46.6.517, 46.6.602, 46.6.605,	)	46.6.304, 46.6.305,
46.6.606, 46.6.701, 46.6.801,	)	46.6.306, 46.6.517,
46.6.901, 46.6.903, 46.6.906,	)	46.6.602, 46.6.605,
46.6.907, 46.6.1101,	)	46.6.606, 46.6.701,
46.6.1201, 46.6.1302,	)	46.6.801, 46.6.901,
46.6.1304, 46.6.1305,	)	46.6.903, 46.6.906,
46.6.1306 and 46.6.1309 and	)	46.6.907, 46.6.1101,
the repeal of Rules 46.6.603,	)	46.6.1201, 46.6.1302,
46.6.902, 46.6.1001,	)	46.6.1304, 46.6.1305,
46.6.1002, 46.6.1003,	)	46.6.1306, AND 46.6.1309 AND
46.6.1301, 46.6.1303,	)	THE REPEAL OF RULES
46.6.1307, 46.6.1308,	)	46.6.603, 46.6.902,
46.6.1310, 46.6.1311, and	)	46.6.1001, 46.6.1002,
46.7.101 through 46.7.1901	)	46.6.1003, 46.6.1301,
pertaining to rehabilitative	)	46.6.1303, 46.6.1307,
and visual services	)	46.6.1308, 46.6.1310,
	)	46.6.1311 AND 46.7.101
	)	THROUGH 46.7.1901 PERTAINING
	)	TO REHABILITATIVE AND VISUAL
	)	SERVICES

TO: All Interested Persons

1. On March 8, 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 rules, the amendment of Rules 46.6.102, 46.6.302, 46.6.304, 46.6.305, 46.6.306, 46.6.517, 46.6.602, 46.6.605, 46.6.606, 46.6.701, 46.6.801, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1101, 46.6.1201, 46.6.1302, 46.6.1304, 46.6.1305, 46.6.1306, and 46.6.1309 and the repeal of Rules 46.6.603, 46.6.902, 46.6.1001, 46.6.1002, 46.6.1003, 46.6.1301, 46.6.1303, 46.6.1307, 46.6.1308, 46.6.1310, 46.6.1311, and 46.7.101 through 46.7.1901 pertaining to rehabilitative and visual services.

2. The rules as proposed to be repealed are 46.6.603 found on page 46-380, 46.6.902 on pages 46-401 through 46-404, 46.6.1001 on page 46-408, 46.6.1002 on pages 46-408 and 46-413, 46.6.1003 on page 46-413, 46.6.1301 on pages 46-423 and 46-429, 46.6.1303 on pages 46-429 and 46-430, 46.6.1307 on page 46-432, 46.6.1308 on pages 46-432 and 46-433, 46.6.1310 on page 46-434, 46.6.1311 on page 46-434, 46.7.101 through 46.7.1901 on pages 46-469 through 46-567 of the Administrative Rules of Montana.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

3. The rules proposed to be adopted provide as follows:

RULE I INSTRUCTIONAL SERVICES FOR BLIND AND VISUALLY IMPAIRED VOCATIONAL REHABILITATION CLIENTS (1) The department may arrange for instructional services to blind and visually impaired vocational rehabilitation clients.

(2) The department will not arrange for or provide instructional services if it determines that due to the time and distance involved, the services are not readily available at a reasonable cost.

(3) The department may purchase the instructional services if the department determines that the client has inadequate financial resources with which to purchase those services.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

RULE II STANDARDS FOR MEDICAL AND SCHOOL FACILITIES

(1) Medical and academic services may be provided to clients only in facilities which meet the following standards:

(a) Hospitals approved by the joint commission on accreditation of hospitals, having more than 100 beds, well-developed surgical and specialty services, medical social services, and therapy departments. Preference will be given to hospitals affording residence training in the specialty in which treatment is sought. In the event that it is neither feasible nor economical in individual cases to use such a hospital, other hospitals may be used if equipped to give quality service as needed, and if approved by the department's medical consultant.

(b) Clinics operated by a state agency or licensed by the state.

(c) Schools, colleges, or training institutions fully accredited by the official accrediting agency within the state wherein the facility is located.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

RULE III PROCEDURES FOR WORK ADJUSTMENT TRAINING

(1) Work adjustment training for a client will only be authorized in a facility which has received from the department approval of its work adjustment program.

(2) Work adjustment training will be authorized only for three month periods at a time. Work adjustment training will

be reauthorized only upon receipt of a report from appropriate facility staff which, based upon a thorough assessment, recommends further work adjustment.

(3) A vocational evaluation is required prior to acceptance into a work adjustment program.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Section 53-7-203, MCA

RULE IV CERTIFICATION OF HANDICAPPED PERSONS FOR MINIMUM WAGE EXEMPTIONS

(1) The department, in accordance with this rule, will certify those handicapped persons who qualify for exemption from minimum wage law.

(2) The purpose of certification is to foster employment opportunities for handicapped workers whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

(3) A handicapped person or the employer of a handicapped person may apply to the department for certification.

(4) The department will determine whether the handicapped person is so severely impaired that he is unable to engage in competitive employment.

(5) Upon certifying the handicapped person, the department will notify the United States Department of Labor and the employer in order that they may implement that person's exemption.

(6) Those handicapped persons enrolled in work activity centers or sheltered workshops who therefore meet the productivity criteria governing enrollment in those facilities will be certified for the minimum wage exemption by the United States Department of Labor in accordance with its procedures.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Section 53-7-203, MCA

RULE V VISUAL MEDICAL PROGRAM: PURPOSES (1) The purposes of the visual medical program are:

(a) to prevent blindness;
(b) to restore sight;
(c) to provide appropriate treatment where loss of sight cannot be prevented or sight cannot be restored.

(2) The visual medical program though administered by vocational rehabilitation services is not a vocational rehabilitation program.

AUTH: Section 53-7-302, MCA
IMP: Section 53-7-302, MCA

RULE VI VISUAL MEDICAL PROGRAM: SERVICES

(1) Visual medical services are:
(a) diagnostic services;

- (b) surgery and treatment services;
- (c) hospitalization services;
- (d) prosthetic appliances, if determined to be necessary in treatment;
- (e) transportation services; and
- (f) follow-up services.

AUTH: Section 53-7-302, MCA

IMP: Section 53-7-302, MCA

RULE VII VISUAL MEDICAL PROGRAM: ELIGIBILITY REQUIREMENTS

(1) Eligibility requirements for the visual medical program are:

(a) The person has an eye condition which needs the attention of an ophthalmologist or optometrist in order to prevent blindness, to restore sight or to treat an eye condition due to blindness.

(b) The person is not otherwise eligible for medical assistance from any other state or federal program including the vocational rehabilitation services program.

(c) The person must be financially in need due to the anticipated costs of the medical services he is to receive.

(i) A person who is above the cost of living standards provided for in ARM 46.10.403, may at the discretion of the department receive visual medical services if the costs of the treatment and eye care would result in that person's having inadequate financial resources to meet the relevant cost of living standards.

AUTH: Section 53-7-302, MCA

IMP: Section 53-7-302, MCA

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

46.6.102 DEFINITIONS (1) "Applicant" means a person who has made formal application to the department to receive vocational rehabilitation services ~~through--the--vocational rehabilitation program~~ administered by the department.

(2) "Client" means an applicant who has been determined by the department to be a handicapped person and to be eligible for the vocational rehabilitation, visual, nonvocational extended employment or visual medical programs administered by the department and who has agreed to accept such services as the department may determine are appropriate for that person's vocational rehabilitation, or other needs.

Subsections (3) and (4) remain the same.

(5) ~~"Disabled individual"~~ "Handicapped person" means a person with a physical or mental ~~disability~~ handicap, inclusive of blindness, that can be diagnosed by a physician or appropriate specialist having recognized credentials.

Handicapped person for the purposes of these rules is synonymous with disabled person.

Subsections (6) through (9) remain the same.

(10) "Severely handicapped ~~individual~~ person" means an ~~individual~~ person with a physical or mental disability which seriously limits his employability skills including mobility, communication, self-care, self-direction, work tolerance, or work skills and for whom vocational rehabilitation would require multiple vocational rehabilitation services over an extended period of time.

Subsection (11) remains the same.

(12) "Vocational rehabilitation services" means those services ~~provided--through-the-vocational-rehabilitation-program~~ administered by the department under the authority of ~~part-1-of~~ Title 53, chapter 7 of the Montana codes annotated and as defined in ~~sub-chapter-5-of~~ this title chapter of the administrative rules of Montana. Vocational rehabilitation services include the vocational rehabilitation, visual, non-vocational extended employment and visual medical programs as defined in this chapter.

(13) "Blindness" means a physical handicap where a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, or other eye conditions which render vision equally defective, or eye condition which will cause blindness.

(14) "Instructional services" means orientation, mobility and rehabilitation teaching services.

(15) "Vocational work evaluation" means a comprehensive process that systematically utilizes work, real or simulated, as the focal point for assessment and vocational exploration, the purpose of which is to assist persons in vocational development. Vocational work evaluation incorporates medical, psychological, social, vocational, educational, cultural, and economic data in the attainment of the goals of the evaluation process.

(16) "Work adjustment training" means a treatment/training process utilizing individual and group work, or work related activities, to assist persons in understanding the meaning, value and demands of work; to modify or develop attitudes, personal characteristics, and work behavior; and to develop functional capacities, as required, in order to assist individuals towards their optimum level of vocational development.

(17) "Sheltered workshop" means a nonprofit rehabilitation facility carrying out a recognized program of rehabilitation for handicapped persons in a work setting, and/or providing handicapped persons with remunerative employment for an

indefinite period of time where those persons cannot meet the standards of the competitive labor market.

(18) "Work activities center" means a nonprofit rehabilitation facility, having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities may include custodial activities and any purposeful activity so long as work or production is not the main purpose.

(19) "Rehabilitation facility" means a facility operated for the primary purpose of providing vocational rehabilitation services to or employment for handicapped persons, by providing one or more of the following types of services:

(a) comprehensive rehabilitation services, including under one management, medical, psychological, social, and vocational services;

(b) testing, fitting, or training in the use of prosthetic and orthotic devices;

(c) prevocational conditioning or recreational therapy;

(d) physical and occupational therapy;

(e) speech and hearing therapy;

(f) psychological and social services;

(g) evaluation;

(h) personal and work adjustment training;

(i) vocational training in combination with other rehabilitation services;

(j) evaluation or control of special disabilities;

(k) instructional services; and

(l) transitional or extended employment.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-101 through 53-7-107, MCA, Sections 53-7-201 through 53-7-203, MCA and Sections 53-7-301 through 53-7-309, MCA

46.6.302 PURPOSE (1) Vocational rehabilitation services provided through the department, except those necessary for determining the eligibility of an applicant for services, may be provided by the department to any person who, after applying for services, has been determined by the department, in accordance with ARM 46.6.305, the criteria of this sub-chapter and that of sub-chapter 4, to be a disabled individual who is eligible for such services and who has agreed to accept such services as an applicant or a client of the department. Eligibility for the receipt of visual medical services and of nonvocational extended employment services will be determined in accordance with Rule VII for visual medical services and ARM 46.6.1300 for nonvocational extended employment services.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Sections 53-7-101 through 53-7-107, MCA, Sections 53-7-201 through 53-7-203, MCA and Sections 53-7-301 through 53-7-309, MCA

46.6.304 DETERMINATION OF ELIGIBILITY (1) The department will, except for visual medical services and nonvocational extended services, determine if an applicant, in accordance with the criteria of this sub-chapter and sub-chapters 4 and 5, policies and standards adopted by the department to govern eligibility, and applicable federal law and regulations, is a disabled individual, has a substantial handicap to employment and may be reasonably expected to benefit significantly as to employability from vocational rehabilitation services.

(2) The determination of an applicant's eligibility will be based on a preliminary diagnostic assessment of the applicant, inclusive of medical, psychological, social and vocational assessments and upon an assessment of financial need, if necessary. The assessments will be prepared and conducted by the department in the manner chosen by the department.

(3) The department shall make available to an applicant those services determined by the department to be necessary and appropriate for assessing the applicant's eligibility.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Sections 53-7-101 through 53-7-107, MCA, Sections 53-7-201 through 53-7-203, MCA and Sections 53-7-301 through 53-7-309, MCA

46.6.305 CLIENT ELIGIBILITY CRITERIA (1) Vocational rehabilitation services, except those necessary for determining the eligibility of an applicant to be a client, will be provided by the department only to a person who is a client.

(2) Eligibility to be a client, except for visual medical services and nonvocational extended employment services, is based on the following basic criteria:

(a) the presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(b) a reasonable expectation that vocational rehabilitation services may substantially benefit the individual in terms of employability.

(3) Eligibility for the visual medical program and for the nonvocational extended employment program are determined in accordance with Rule VII for visual medical services and ARM 46.6.1309 for nonvocational extended employment services.

~~(3)~~ (4) Eligibility to be a client will not be determined:

(a) with regard to sex, race, age, religion, creed, color, or national origin;

(b) solely on the basis of type of disability;

(c) upon an age limit which will, of itself, result in a finding of ineligibility for any individual who otherwise meets the basic eligibility requirements;

(d) upon a residence requirement, durational or other, which excludes from services any individual who is in the state and who would be eligible for vocational rehabilitation services otherwise.

44+ (5) An individual will not be eligible to be a client unless the department determines that he is utilizing all public and private benefits and services to which he may be otherwise entitled and which are of a similar nature to those available through the vocational rehabilitation program of the department.

45+ (6) An applicant must agree to accept such vocational rehabilitation services as the department determines in accordance with the objectives of his vocational rehabilitation plan are appropriate for his vocational rehabilitation.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-101 through 53-7-107, MCA, Sections 53-7-201 through 53-7-203, MCA and Sections 53-7-301 through 53-7-309, MCA

46.6.306 SPECIFIC CRITERIA FOR RECEIPT OF CERTAIN SERVICES Subsections (1) through (1)(b)(ii) remain the same.

(iii) physical restoration services may be reasonably expected to eliminate or substantially reduce the ~~disabling handicapping condition(s) within 6 months.~~

Subsections (1)(c) through (2)(b)(ii) remain the same.

(iii) post-placement services which are of no cost to the department; and

(iv) instructional services.

Subsections (2)(c) through (2)(c)(xiii) remain the same.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA and

IMP: Sections 53-7-102, 53-7-105, 53-7-203, 53-7-302, 53-7-306 and 53-7-307, MCA

46.6.517 FINANCIAL LIMITATIONS (1) The provision of vocational rehabilitation services by the department is subject to the following financial limitations.

(a) services subject to rates of payment are as follows:

(i) ~~the rates of~~ payment for physical and mental restoration services listed in ARM 46.6.503 will be limited to those rates provided in the medical assistance rates of Title 46, chapter 6, subchapters 5 and 12 of the administrative rules of Montana.

(ii) payment for hospital care will be those rates as established by the Montana department of labor, worker's compensation division, under the authority of sections 39-71-309

and 39-71-704, MCA in its fee schedule for hospital charges.

(iii) payment for hospital care from a hospital in another state will be those rates as established by that state's vocational rehabilitation agency.

(b) The maximum financial contributions for certain services during the period of client status will be as follows:

(i) \$50 a week for income maintenance;

(ii) \$200 total for tools;

(iii) \$2,000 total for equipment.

(c) The maximum financial contributions for services to an individual considered to be industrially injured will be that established in accordance with the authority of 39-71-1003, MCA.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-105, 53-7-203, 53-7-302, 53-7-306 and 53-7-307, MCA

46.6.602 POLICIES ON ESTABLISHMENT OF REHABILITATION FACILITIES Subsections (1) through (3) are deleted in their entirety.

(41) In the establishment of rehabilitation facilities, means the department may financially participate in:

(a) the acquisition of initial equipment for such purposes; or and,

(b) the initial staffing of a rehabilitation the facility for a period not to exceeding four years and three months.

(e2) The Division department will not provide participate financially in the establishment of for work activity centers.

(53) Where initial staffing assistance is provided, it available from the department, financial participation from the department will be available only for personnel engaged in new or expanded program activities of the rehabilitation facility.

(64) Prior to the establishment of a rehabilitation facility, the State-agency department will determine that the need for such rehabilitation facility exists, and that such establishment is consistent with the state rehabilitation facilities plan, and that the facility will be in compliance with all federal and state laws and statutes governing civil rights.

Subsections (7) and (8) are deleted in their entirety.

(5) In order to be approved by and to receive financial assistance from the department a rehabilitation facility must submit the complete plans, specifications and costs of all construction, equipment, and related expenses for the proposed facility to the department for final approval.

(6) Certification by the state is not a guarantee of grants nor of purchases of services by the department.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

46.6.605 EXPEND UTILIZATION OF FEDERAL FUNDS

FINANCIAL PARTICIPATION

~~{1}--if-the-State-Division--seeks-federal--financial-participation-in-expenditures-for-establishment-of-rehabilitation facilities, it will be for establishment of public and private nonprofit facilities only.~~

(21) The division department will not use federal funds available for the basic vocational rehabilitation program in any expenditure for:

- (a) acquisition of land in connection with the establishment of a rehabilitation facility;
- (b) acquisition of existing buildings;
- (c) remodeling and alteration of existing buildings;
- (d) expansion of existing buildings;
- (e) architect's fees;
- (f) site survey and soil investigation;
- (g) initial fixed or movable equipment of existing buildings;

(h) works of art; or

(i) construction of new buildings.

(3) When the State--agency department seeks federal financial participation in expenditures for establishment of a rehabilitation facility, it will be at the rate allowable under federal guidelines requirements.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

46.6.606 CONTROL OF EXPENDITURES ~~{1}--Control--of--all expenditures for a facility which is an organizational unit of the State--Division will be vested in the Division. All expenditures will be made and accounted for in accordance with the appropriate State laws and regulations.~~

(21) ~~In instances w~~ Where assistance is given to a public or a private nonprofit agency entity for the establishment of a rehabilitation facility, the State-Division department will exercise controls to see that funds are expended for the purposes intended. The facility will be supervised, including records, accounts and expenditures, through the use of reports, on-site visitations and other inspections by Division department staff members representatives.

(32) Where financial assistance is given to a public or a private nonprofit agency entity for the establishment of a facility, funds will be expended by that agency entity in accordance with procedures and standards equivalent to those

applicable to the State Division department in making direct expenditures for similar purposes.

(3) The department will supervise all grants to ensure that grant conditions are met.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

46.6.701 FACILITIES-AND-SERVICES GROUP SERVICES PROGRAM

(1) The State Division department provides a program of financial assistance for ~~facilities and services and modifications to facilities~~ which may be expected to contribute substantially to the rehabilitation of a group of disabled individuals handicapped persons some of whom are currently or potentially clients of vocational rehabilitation clients services. ~~These services and facilities should not be directly related to the individualized rehabilitation program of any one handicapped individual. All disability groups are eligible. This includes, but is not restricted to, the purchasing either in block funded form or grant form services, the removal of architectural barriers and/or equipment.~~

(2) A service should not be developed or facility modified solely for the purpose of directly benefiting any one handicapped person.

(3) Preference will be given to services or facilities with the potential of benefiting the largest number of handicapped persons at a minimum cost to the department agency due to our financial limitations.

(24) These funds will be only utilized:

(a) to resolve a one-time problem, such as exists in the removal of architectural barriers or the purchase of equipment; and

(b) to provide transportation and instructional materials.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

46.6.801 STATEMENT OF CIVIL RIGHTS COMPLIANCE

(1) Pursuant to the provisions of Title VI of the Civil Rights Act of 1964, and the regulations issued thereunder, the programs vocational rehabilitation services administered by the ~~Montana Rehabilitative Services Division department~~ are being and will continue to be conducted in such manner that no person in the United States will be is excluded from participation in, be denied the benefits of, or be subjected to discrimination under such program the services provided on the

ground of race, color, national origin, sex, age, physical or mental disability, creed, marital status, or political affiliation. ~~The state agency is in fact administering the program in accordance with the law, the regulations, and the policies and practices enumerated in paragraph (2) (b) below.~~

~~(2) The state agency will conduct the vocational rehabilitation program in accordance with the provisions of Title VI and the regulations issued thereunder, and, more specifically, will follow policies and practices including but not limited to those described below:~~

~~(a2) No individual person will on the ground of race, color, national origin, sex, age, physical or mental disability, creed, marital status, or political affiliation be denied any services, financial aid, or other benefits provided under through the vocational rehabilitation program services or be provided any service, financial aid, or other benefit which is different, or is provided in a different manner, from that provided to others under through the program services. Such services, financial aid, or other benefits include all vocational rehabilitation services under the Vocational Rehabilitation Act, the regulations governing the vocational rehabilitation program and the approved state plan (July 1976), and such related matters as the making of appointments, the designation of waiting periods, the selection of employment objectives, the quality of the services provided, and selection and assignment of operators of vending stands and other small businesses.~~

Subsection (2) (b) is deleted in its entirety.

(e3) Employees of the State agency department, or of other agencies or organizations participating in the vocational rehabilitation program, will not be assigned caseloads or clientele on the basis of race, color, national origin, sex, age, creed, marital status, or political affiliation of the person being served.

Subsections (2) (d) and (e) are deleted in their entirety.

(f4) In making determinations of the types of activity to be included in the vocational rehabilitation program ~~services of the geographical areas in which such program or activity will be carried out, or the persons who will be served or afforded an opportunity to participate, geographical or other criteria or methods of administration will not be used which have the effect of subjecting individuals to discrimination because of their race, color, national origin, sex, age, physical or mental disability, creed, marital status, or political affiliation or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, sex, age, physical or mental disability, creed, marital status, or political affiliation.~~

(g5) The ~~State-Agency~~ department recognizes that its obligation to conduct the program services in accordance with the requirements of the law and the regulations extends ~~not only to those activities which are conducted directly by the state-agency but also~~ to all activities under arising out of the provision of the program services which are conducted by other agencies, institutions, organizations, or political subdivisions, through contracts, or other arrangements with the ~~state-agency~~ department. This includes any activity supported with the aid of federal financial assistance or with the aid of any nonfederal funds, property, or other resources required to be expended or made available for the program services to meet matching requirements, and also includes other conditions which must be met in order to receive the federal financial assistance.

Subsections (2) (h) and (i) are deleted in their entirety.

(j6) The ~~State-agency~~ department will make available to participants, beneficiaries, and other interested persons such information regarding the provisions of the Act pertinent federal laws and the regulations, and make available such information in such manner, as may be required by the commissioner of rehabilitative services administration to apprise such persons of the protections against discrimination assured them by the Act law and the regulations and will require the same from other agencies, institutions, organizations, or political subdivisions participating in the program.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

46.6.901 GENERAL PURPOSES OF STANDARDS FOR VENDORS

Subsection (1) is deleted in its entirety.

~~(2)---Types-of-facilities-~~

(a1) It is the policy of the ~~State-Division~~ department to use, whenever feasible, facilities which are accredited or approved by an appropriate public authority or professional organization. Where this is not possible, the facilities selected, whether public or private, are those that appear upon investigation to be the best adapted to render the specific services required. ~~Main-factors-in-the-selection-of~~ Facilities in all cases are will be chosen based upon the professional and technical qualifications of personnel, adequacy of equipment, and scope and quality of services rendered.

Subsections (3) through (5)(a) are deleted in their entirety.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302,
and 53-7-303, MCA

46.6.903 REHABILITATION FACILITIES STANDARDS

(1) Services will not be purchased for clients by the department from a rehabilitation facility until certification or provisional certification is attained from the department by that facility.

(1) (2) The Division department will accept as its standards for vocational rehabilitation facilities the standards of the commission on accreditation of rehabilitation facilities (CARF); or for those facilities serving blind persons the standards of the national accrediting council (NAC) or of CARF. These standards will be applied to any rehabilitation facility where the Division department provides funding or purchases services or where the Division department has formal cooperative agreements. Facilities accredited by CARF will be adjudged to be certified.

(23) If certification is denied, the facility will be notified of the reason/reasons for such decision thirty (30) days in advance of the date on which no more services will be purchased or grants awarded by the Rehabilitative-Services Division department. nor grants awarded by some. The fair hearing process will be an available recourse to facilities. (See Sub Chapter 2 of Chapter 2 of these Administrative Rules of Montana for the fair hearing process.)

Subsection (3) is deleted in its entirety.

(4) Applications of standards: Facilities accredited by CARF or NAC will be adjudged to be certified.

Subsections (4) (a) and (b) are deleted in their entirety.

(5) Duration of certification:

(a) The Rehabilitative-Services-Division department will provide full certification upon receipt from the facility of records and reports attesting to its CARF or NAC accreditation. The tenure of the certification by the Rehabilitative Services-Division department shall be one year. The Division department may, in individual cases and at its sole discretion, allow a provide for provisional certification of the a facility for up to six (6) months in tenure based upon records and reports; request for an additional 6 month period will be granted upon adequate information that the facility is attempting to meet CARF accreditation as provided for in subsection (7).

(b) It shall be an expressed condition of the Rehabilitative-Services-Division certification that they, The department, upon being apprised of any source of material change in the facility's functioning in terms of the standards or in terms of the failure of the facility to provide such records

and reports as requested by the ~~Rehabilitative--Services Division~~ department, may review the facility's certification and may modify its certification decision. At the discretion of the ~~Rehabilitative--Services--Division~~ department, such review may include an onsite visit. ~~Certification-by-the state-is-not-a-guarantee-of-grants-ner-of-purchases-of-services-by-the-Rehabilitative-Services-Division.~~

Subsection (5) (c) is deleted in its entirety.

(6) Provisional certification: ~~minimum-requirements-~~

(a) ~~The department may in its discretion provisionally certify a new facility during the first 6 months of its operation. At the termination of the tenure of provisional certification, the facility must meet the requirements for full certification. Findings of the department's facility staff will be summarized in a written report to the facility. If non-certification is the result of the site survey, another survey can be requested on a date six months subsequent to the date of the prior survey.~~

(b) ~~The department may in its discretion provide an existing facility with a provisional six (6) month certification if that facility fails to meet CARF or NAC accreditation. No facility will be utilized beyond the six (6) month provisional certification unless CARF or NAC accreditation is received and the facility certified. The department may extend provisional certification where the lack of CARF or NAC accreditation is due to the failure of CARF or NAC to act.~~

(ac) ~~In order for a facility to receive provisional certification, the Rehabilitative-Services-Division department must be provided with records, reports, and documents attesting to the facility's level of compliance with CARF or NAC standards for-extension-beyond-6-months. Evidence must be shown of the ability to meet CARF or NAC compliance within a 12 6 month period.~~

(7) ~~Exclusion-and-exceptions.~~ CARF or NAC accreditation need not be required as the applicable standards for those types of facilities listed in Rule II or in ARM 46.9.907. For facilities or services not listed in Rule II or ARM 46.6.907 and not typically subject to CARF or NAC accreditation, the department will approve their utilization by clients if the facility or service is licensed by the department or other state agency, and such licensing is determined by the department to provide adequate standards.

Subsections (7) (a) and (b) are deleted in their entirety.

(8) ~~Out-of-state-facilities:~~ Only those out-of-state rehabilitation facilities accredited by CARF or NAC will be occasionally utilized by the ~~Rehabilitative-Services-Division~~ department.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

46.6.906 MAINTENANCE ENFORCEMENT OF STANDARDS (1) The

State-Division department periodically will evaluate the quality of services provided to Division department clients by the various-types-of rehabilitation facilities. This will be accomplished through personal visitations by representatives of the Division department, by written reports, by consultation with official accrediting agencies, and through other effective means.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

46.6.907 STANDARDS FOR SPECIFIC TYPES OF PERSONNEL PROVIDERS (1) The department for the purposes of pro-

viding vocational rehabilitation services will insure that appropriate licensing and service standards are met by providers.

(1a) Medical diagnosis and medical treatment are may be provided handicapped-individuals only by physicians licensed to practice medicine and surgery and otherwise qualified by training and experience to perform the specific services required. Persons-providing-physical-restoration-services will meet standards which insure services of high quality. It will be the policy of the State-Division to allow the client free choice of physician for diagnostic and treatment services, wherever possible and desirable.

(2b) The standards of personnel providing pPhysical or occupational therapy are registry, or graduation may be provided only by therapists who are registered or have graduated from a school for the training of therapists generally accepted by the profession, and who are licensed by the state.

(3c) The standards of qualification of personnel providing-nNursing services are registration, or eligibility for registration, as a graduate nurse, or registration, or eligibility for registration, as a practical nurse, may be provided only by registered nurses or persons who are eligible to be registered.

(4d) Dental diagnosis and dental treatment are may be provided only by dentists who are licensed to practice dental surgery, and otherwise qualified by training and experience to perform the specific dental service required.

(5e) The standards of personnel providing-oOptometry services will may be these provided only by licensed to practice optometrists.

(6f) The standards of personnel providing Osteopathic services as an osteopathic physician will may be these provided only by medically licensed to practice medicine osteopaths.

(7g) ~~Standards for the selection of prosthetists~~ are based on the professional standards established services may be provided by prosthetists certified by the American Board for certification of the prosthetic and orthopedic appliance industry, inc. In the event there are not prosthetists available who meet such standards, the ~~State-Division~~ department will utilize the services of those prosthetists who are acceptable to other public and private agencies.

(8h) ~~Standards for the selection of speech and hearing services~~ may be provided only by therapists ~~are based on the professional standards as established~~ certified by the American speech and hearing association ~~for the certification of as clinical competence and/or who are licensed by the Montana state of Montana license.~~

(9i) ~~Standards for selection of psychologists are based on professional standards. The Division~~ Psychological services may be provided ~~will use~~ only by psychologists who are licensed to practice psychology in Montana or employed as a psychologist for an institution, academic institution, governmental agency or research laboratory ~~providing~~ these persons are performing the duties for which they were employed by these organizations.

(92) The ~~State-Division~~ department will determine which of the medical services required are specialty services. Medical ~~services~~ determined to be specialty services will be rendered only by physicians found by the ~~State-Division~~ department to be specialists qualified to perform the particular specialty service required. In providing a specialty medical service, the ~~Division~~ department will use medical specialists who hold certificates of the American medical specialty board, where such boards have been established, or physicians who have established eligibility to examination by such boards; or, when no physicians are available in one of these fields who meet either of the above standards, other qualified physicians, approved by the department's medical consultant are used.

(93) The ~~State-Division~~ department has established and will maintain standards for selection of training personnel who are qualified to conduct and carry out satisfactory ~~training activities~~ instructional services as relates to the specific training ~~desired~~ needed.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302, and 53-7-303, MCA

46.6.1101 CONFIDENTIAL INFORMATION Subsections (l) through (l)(k) are deleted in their entirety.

(l) The confidentiality of client information will be assured in accordance with federal and state statutes and rules and with departmental policy.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302,
and 53-7-303, MCA

46.6.1201 HEARINGS ON APPLICANT'S APPEALS (1) Administrative-review: An applicant for, or recipient of, vocational rehabilitation services ~~under the state plan~~ who is dissatisfied with any ~~State-Division~~ department action with regard to the furnishing or denial of services, will be advised of his right to ~~and may~~ file a request for an administrative review ~~and redetermination~~ of that action and right to a fair hearing if he is dissatisfied with the outcome of the administrative review. ~~such~~ The administrative review shall be ~~made~~ conducted by the ~~chief~~ administrator of vocational rehabilitative services or designee.

(2) ~~The fair hearing--The Division~~ shall be conducted in accordance with the fair hearing rules of the department as provided for in ARM 46.2.201 through 46.2.214.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Sections 53-7-102, 53-7-103, 53-7-203, 53-7-302,
and 53-7-303, MCA

46.6.1302 OBJECTIVES OF THE NONVOCATIONAL EXTENDED

EMPLOYMENT PROGRAM (1) The objectives of ~~this~~ the nonvocational extended employment program ~~as identified--by the rehabilitative services division~~ are:

(a) ~~the creation of additional employee work stations to~~ facilitate the development of appropriate employment positions in community-based facilities to be utilized by persons determined by the department to be in need of nonvocational extended employment;

(b) ~~the provision of alternate types of care for current institutional population~~ to encourage community placement of currently institutionalized persons by developing community-based, nonvocational extended employment positions;

(c) ~~the provision of~~ to provide opportunities for severely disabled handicapped persons (who cannot be readily absorbed in the competitive market) to participate in ~~sheltered workshop and work activity center~~ nonvocational extended employment programs in Montana.

(2) The nonvocational extended employment program though administered by vocational rehabilitation services is not a vocational rehabilitation program.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Section 53-7-203, MCA

46.6.1304 RESPONSIBILITIES FOR THE NONVOCATIONAL
EXTENDED EMPLOYMENT PROGRAM FUNCTIONS OF REHABILITATIVE

SERVICES DIVISION (1) The Vocational rehabilitation
rehabilitative services division has five main functions is
administratively responsible for:

(a) to administration of the nonvocational extended
employment program including:

(i) allocation of extended monies to sheltered work-
shops and work activity centers;

(ii) payment of extended monies to sheltered workshops
and work activity centers;

(iii) evaluation of the results of the extended payments
in relation to subsidy program goals.

(b) to participate with community services division and
the workshops and work activity centers to assure that all
clients referred for extended employment have been are
evaluated and a determination to be is made as to whether
they are appropriate for placement in sheltered extended
employment;

(c) to referring appropriate clients to certified
sheltered workshops and work activity centers, particularly
those who are joint community services division and
rehabilitative services division clients;

(d) to assisting in periodically re-evaluating clients
who are closed in have been terminated from sheltered
extended employment to assess their ability to profit from
further rehabilitative services division the vocational
rehabilitation program, services; and to reopen such cases as
may be able to benefit;

(e2) Supportive services required by individuals
persons in the extended employment program will be arranged by
members representing social services or by the community
worker; the designated representatives of the community
services and developmental disabilities divisions.

(i) Rehabilitative services division must be the first
source of training opportunities to be considered for any
individual, age 16 or over, who is not legally blind but whose
condition of physical, mental or emotional health substantial-
ly prevent him from holding regular employment.

(ii) Emotional problems include the standard psychiatric
classifications of mental retardation, psychoneuroses, or
psychosis. To qualify in these categories there must be sub-
stantial evidence that the maladaptive behavior has been of
sufficiently long duration to constitute a pattern of behavior
and is not merely a situational reaction to crisis. There
must also be supporting evidence to indicate that the behavior
has substantially prevented the person from holding regular
suitable jobs. Included as eligible for rehabilitative ser-
vices division training or rehabilitation services are those

~~people who have been functioning, but substantially below the capability they may attain through rehabilitative services division services.~~

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Section 53-7-203, MCA

46.6.1305 EXTENDED EMPLOYMENT COMMITTEES (1) Guidelines.
~~(a)~~ A multi-agency committee shall be established at each sheltered workshop and work activity center participating in the legislatively-approved nonvocational extended employment program. Each committee shall have representatives from the facility, the community services division, social services, and vocational rehabilitative services division--(the vocational--rehabilitation--facility--liaison--counselor, and the regional developmental disabilities division community worker). The rehabilitation facilities specialist is always shall be an ad hoc member of the committee and shall vote to break ties.

(2) The purposes of the nonvocational extended employment committees are:

(a) To screen referrals for appropriateness of certification to the extended employment program. The rehabilitation facilities specialist should be consulted if there is any question as to appropriateness of a given workshop facility for a given client;

(b) To certify disabled handicapped persons for an extended employment slot, in a particular sheltered workshop or work activity center;

(c) To identify client goals. The client should be involved actively in this process, of--determining--his appropriateness for sheltered employment under this program. Goals should be set with the client, not just for the client and each client should know what he can expect from this program and what he must put into the program. A written plan should be developed for each client and must be a part of the workshop facility file, social service file, and the vocational rehabilitative services division file;

(3d) To monitor, coordinate, or provide services to extended employment clients;

(ai) The Community--services--division assigned social service worker will should provide casework and supportive services.

(bii) The Rehabilitative--services--division vocational rehabilitation counselor should will periodically ascertain client readiness for additional vocational rehabilitation services programs .

(ciii) The Workshop facility member should will represent all workshop facility functions.

(div) The Community-worker training and contract manager of the developmental disabilities division should will provide

arrange for purchase-of-service functions. appropriate developmental disability services.

(4e) To de-certify clients:

(ai) When the absences of a clients are too frequent for them one to be gaining from workshop the extended employment experiences;

(bii) When a clients are is deceased;

(ciii) When a clients moves from the area;

(div) When a clients ~~can't-tolerate-the~~ desires to leave that program; or

(ev) When a client reaches a level of productivity at which he is no longer requires eligible for the program.

(5f) To determine when and how long slots should be held open for an absent enrolees- client; and

(6g) To assess at least every six months the status of the client enrolled in extended employment slots to determine their progress, develop new goals, and otherwise review the written plan. The assessment ~~should-be-committed-to~~ will be in writing with a copies in the workshop facility files and in the ~~social-service-and-in-the-vocational-rehabilitation~~ appropriate department case records.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA

IMP: Section 53-7-203, MCA

46.6.1306 RHBS FACILITY REQUIREMENTS FOR THE NON-

VOCATIONAL EXTENDED EMPLOYMENT PROGRAM (1) A client

nonvocational extended employment slot which remains vacant for a period of 60 days will, at the discretion of the department, be subject to removal from the facility's slot allocation. ~~at-the-discretion-of-the-administrator-of-the-rehabilitative-services-division~~

(2) A facility which is unable to provide consistent services, minimally six hours per day five days per week, to extended employment clients is subject to a reduction of the facilities slot allocation at the discretion of the ~~administrator-of-the-rehabilitative-services-division~~ department.

(3) Should the services of a facility which provides extended employment services ~~to-clients-of-the-rehabilitative-services-division~~ fall below minimum standards, the department will notify the facility ~~will-be-notified~~ in writing of the deficiencies and ~~be-given~~ state a specific period of time not to exceed six (6) months ~~to-make-corrections~~ for corrective actions. Should corrective measures not be made, the facility ~~will-be-subject-to~~ lose all allocated slots of the extended employment program.

(4) Facilities are required to notify ~~the-rehabilitative-services-division~~ the department ~~facility-liaison-counse-~~

ior when a client has been absent from the a program for three consecutive work days. The facility is responsible for informing the ~~specified--rehabilitative--services--division~~ department personnel of the reason for the absence. The ~~rehabilitative--services--division~~ Department personnel have the authority to excuse or not excuse the absences. This fact ~~will be viewed as one of the--followups--by the rehabilita-~~
~~tive--services--division--counselor~~

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA
IMP: Section 53-7-203, MCA

46.6.1309 DETERMINING ELIGIBILITY FOR NON-VOCATIONAL

EXTENDED SLOTS (e1) The nonvocational extended employment committee shall develop and maintain a prioritized waiting list from which candidates shall be drawn when vacancies occur; such prioritized list shall be developed along the lines of the criteria described in these--guidelines section (3).

(a2) All referrals must have undergone a comprehensive work evaluation by rehabilitative--services--division vocational rehabilitation services. ~~which--is--the--referral~~
~~resource~~

(13) Criteria for determining ~~which--clients--are~~ those persons to be certified into the nonvocational extended employment slots program shall be as follows:

(a) A person in order to receive consideration for certification into the program must be severely handicapped.

~~(b)--The--caseworker--shall--make--a--determination--as--to~~
~~whether--the--referral--is--a--recipient--of--supplemental--security~~
~~income--or--medical--assistance--Priority--will--be--given--to--this~~
~~group--who--would--be--entitled--to--purchase--of--service--using~~
~~federal--funds--from--family--and--adult--services--However--reha-~~
~~bitative--services--division--will--fund--subsidy--slots--using~~
~~unmatched--monies--where--clients--meet--remaining--criteria~~

(eb) ~~Institutional--history~~: Priority should be given also to those referrals who have been institutionalized in state institutions and who have been rehabilitated to the point of readiness for sheltered nonvocational extended employment. ~~Slightly--lower~~ priority shall be given to those referrals who have not been institutionalized but who are

adjudged to be candidates for institutionalization if not provided sheltered extended employment.

~~(dc) Productivity level: Since the purpose of this program is to provide sheltered employment for the severely disabled, the committee shall give greater weight~~ Priority shall be given to "obviously low" producers as compared with those who are only "marginally" productive. "Obviously low" producers are identified as being up to 50 percent productive (when compared with normal non-handicapped workers). "Marginal" producers would range between 50-75 percent productivity and are to be paid that percentage of the prevailing wage. ~~These individuals usually "earn their own way" to a great extent and the workshop requires relatively little financial support outside of product sales.~~ Workers classified as over 75 percent shall will generally not be certified to for the nonvocational extended employment program as they are productive enough to contribute their share of the overhead and they are approaching the point of readiness for competitive employment.

(i) Productivity level ~~would~~ will be determined in the evaluation process.

~~(iii) An amount considered necessary to subsidize the net loss of a workshop serving this client population will be determined by each facility and used as the payment required.~~

~~(e)~~ (d) The vocational rehabilitation program must be the first source of training opportunities to be considered for any person, age 16 or over, whose condition of physical, mental or emotional health substantially prevent him from holding regular employment.

(iii) Emotional problems include the standard psychiatric classifications of psychoneuroses or psychosis. To qualify in these categories there must be substantial evidence that the maladaptive behavior has been of sufficiently long duration to constitute a pattern of behavior and is not merely a situational reaction to crisis. There must also be supporting evidence to indicate that the behavior has substantially prevented the person from holding regular employment.

(e) Those persons eligible for services for developmentally disabled persons provided by the department must fully utilize those services before they may be considered for eligibility for extended employment services.

(4) Whenever the extended employment committee is unable to arrive at a decision concerning certification, the committee will submit the matter to the division administrator with relevant materials for a final decision.

AUTH: Sections 53-7-102, 53-7-203, and 53-7-302, MCA


IMP: Section 53-7-203, MCA

5. The department is generally revising the rules relating to the development of rehabilitation facilities, the standards for providers of services, civil rights compliance,

confidential information, fair hearings, the extended employment program, the visual medical program, and financial limitations upon services. Those revisions are for the purposes of eliminating unneeded provisions and language, providing for clarity, and revising certain criteria and standards. The vocational rehabilitation services and visual services rules are being brought together into one set of rules. This synthesis is necessary due to the current joint administration of the programs. Where necessary, distinctions between those programs are retained.

6. 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 March 16, 1984.

7. 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 February 6, 1984.

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

In the matter of the	)	NOTICE OF AMENDMENTS OF
amendments of 8.22.303 sub-	)	8.22.303 INSTITUTION OF PRO-
section (8)(a), concerning	)	CEEDINGS BY PETITION, 8.22.
proceedings by petition, 8.22.	)	501 DEFINITIONS, 8.22.502
501 subsection (23)(a) and (b)	)	LICENSES ISSUED FOR CONDUCT-
concerning definitions, 8.22.	)	ING PARI-MUTUEL WAGERING ON
502 subsection (41), also adds	)	HORSE RACE MEETINGS, 8.22.503
a new subsection concern-	)	ANNUAL LICENSE FEES,
ing financial obligations of	)	8.22.610 STEWARDS, 8.22.706
pari-mutuel licensees, 8.22.	)	JOCKEYS - APPRENTICES, 8.22.
503 concerning the fee sche-	)	1602 DUTIES OF THE LICENSEE
dule, 8.22.610 subsection (8))	
stewards, 8.22.706 concern-)	
ing apprentice jockeys, and)	
8.22.1602 adding a new sub-)	
section concerning unclaimed)	
tickets.)	

TO: All Interested Persons:

1. On December 15, 1983, the Board of Horse Racing published a notice of public hearing on the proposed amendments of the above-stated rules at pages 1775 through 1782, 1983 Montana Administrative Register, issue number 23.

The hearing was duly held on December 5, 1983 in the downstairs conference room, Department of Commerce, 1430 9th Avenue, Helena, Montana. In addition to staff and board members, 7 persons were attendance.

Opposition was in regard to two of the proposed amendments. Opposition came from three members of the Horsemans Benevolent Protective Association.

Opponents to the "double maiden" rule, 8.22.501 (23)(a) and (b) argued that owners would be unwilling to risk breaking their horses "maiden" status for small purses at small tracks.

The board felt that, where, when or how owners and trainers choose to break their horses' "maiden" is of no concern to the board. This is a decision which must be made by individual horsemen. However, the board felt that, if tracks wanted to keep these horsemen, then they should become more competitive and raise their purse money.

Opponents also argued that some horsemen would lose intentionally rather than risk their horses' "maiden" status at a race track of small tracks.

The board feels that the state racing officials are highly trained and are charged with regulating the sport and dealing with individuals who would deliberately hold a horse back. There are rules that deal with those who do not put forth their best effort.

A further concern was expressed that, by abolishing the "double maiden" rule, it would be harder to "break" a maiden status.

The board felt that the proposed "one time only" maiden rule would be more uniform with other jurisdictions and would be easier to report and track, thus overshadowing the concern expressed.

Opposition was expressed with regard to rule 8.22.503. The interpretation of the statutory language which states that the license fee must be commensurate with the cost of issuing a license was questioned. It was felt that the board's formula for calculating costs might not be correct as the license proposed for tracks stayed the same, whereas fees for other categories went up.

The board feels that it properly developed and submitted a cost recovery formula and that the cost of issuing a license can include more than that which is involved in photographs and application blanks.

The board did respond to comments on track license and amended the rule to assess the tracks a \$100.00 license fee.

Additional opposition suggested that raising the fee from \$10.00 to \$20.00 would cause an undue hardship on jockeys and discouraged them from going to small tracks.

The board referred to evidence that a jockeys' license in Montana is by and large lower than in most jurisdictions. The board felt that the tracks are, or should be, promoting their meets, increasing their purse structures and inviting jockeys to participate. This is not the business of the board.

2. For the reasons stated in the notice and above, the board is amending the rules as proposed with the following exceptions:

8.22.502 - proposed amendment of subsection (41) and addition of new subsection (42) are being delayed at this time. New subsection (43) will be adopted as proposed.

8.22.503 will be amended adding trainer fee and increasing the track license fee and will read as follows: (new matter underlined, deleted matter interlined)

8.22.502 ANNUAL LICENSE FEES (1) The following fees shall be charged annually:

(1) Trainer	\$20.00
(2) ...	
(5) Track license	10-00 <u>100.00</u>
(6) ...	

3. A telephone call was also received from David Niss, attorney for the Administrative Code Committee of the legislature requesting the board use as an additional implementing section, 23-4-104, MCA. No other comments or testimony were received.

BOARD OF HORSE RACING

LINDA KING, CHAIRMAN

BY: 

ROBERT WOOD, STAFF ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 6, 1984.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule 18.7.241,	)	RULE 18.7.241, FORMS
Forms for utility occu-)	
pancy of highway right of)	
way)	

TO: All Interested Persons:

1. On December 29, 1983, the Department of Highways published notice of a proposed amendment of Rule 18.7.241 concerning Utility Occupancy Forms at pages 1897-1898 of the 1983 Montana Administrative Register, issue number 24.
2. The agency has adopted the rule as proposed.
3. No written comments or testimony were received.
4. The authority for the rule is Section 60-3-101, MCA, and the rule implements section 60-4-402, MCA.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State February 6, 1984.

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

In the matter of the adoption)	NOTICE OF ADOPTION OF
of an emergency rule requiring)	AN EMERGENCY RULE
workable ignitor systems on)	REQUIRING WORKABLE
wells producing H ₂ S gas.)	IGNITOR SYSTEMS ON
	WELLS PRODUCING
	HYDROGEN SULFIDE GAS

TO: All Interested Persons.

1. The Board of Oil and Gas Conservation finds that several producing wells in this state are producing hydrogen sulfide in potentially lethal quantities. Unless those wells are equipped with a workable ignitor system to ensure that said lethal gas is continually burned, their existence poses an eminent peril to the public health and safety.

2. The text of the rule is as follows:

RULE I (36.22.1221) HYDROGEN SULFIDE IGNITOR SYSTEMS REQUIRED
All operators of wells emitting 20 parts per million or more of H₂S gas shall ensure that workable ignitor systems are installed on such wells and take whatever other steps that may be necessary to ensure that all waste gas is flared and not vented to the atmosphere.

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

The emergency action is effective February 6, 1984.

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

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

Certified to the Secretary of State February 6, 1984.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL)	NOTICE OF REPEAL OF Rules
of Rules 42.12.321 and)	42.12.321 and 42.12.322
42.12.322 relating to special)	relating to special permits.
permits.)	

TO: All Interested Persons:

1. On November 10, 1983, the Department of Revenue published notice of the proposed repeal of rules 42.12.321 and 42.12.322 relating to special permits at page 1657 of the 1983 Montana Administrative Register, issue number 21. Notice of public hearing was given at page 1913 of the 1983 MAR, issue number 24.

2. The Department has repealed the rules as proposed.

3. On January 20, 1984, a public hearing was held to consider this matter. The hearing was held at the request of the Montana Tavern Association. However, MTA withdrew its request by letter received on January 19, 1984. On January 20, 1984, the Department held the hearing as noticed. No members of the public appeared. The Hearing Officer, Roy Andes, Agency Legal Services, held that there was no need to prepare a written report since no members of the public were present. He then adjourned the hearing and remanded the matter to the Department for further proceedings in compliance with the Montana Administrative Procedure Act. No other comments or testimony were received.

4. The authority of the Department to repeal the rules is based on § 16-1-303, MCA, and the rules implement § 16-4-301, MCA.

IN THE MATTER OF THE AMEND-)	NOTICE OF AMENDMENT of Rule
MENT of Rule 42.12.129)	42.12.129 relating to the
relating to the determination))	determination of proximity to
of proximity to a place of)	a place of worship or school.
worship or school.)	

TO: All Interested Persons:

1. On November 10, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.12.129 relating to the determination of proximity to a place of worship or school at pages 1653 and 1654 of the 1983 Montana Administrative Register, issue number 21. Notice of Public Hearing was given at page 1914 of the 1983 MAR, issue number 24.

2. The Department has amended rule 42.12.129 as proposed.

3. On January 20, 1984, a public hearing was held to consider this matter. The hearing was held at the request of the Montana Tavern Association. However, MTA withdrew its request by letter received January 19, 1984. On January 20, 1984, the Department held the hearing as noticed. No members of the public appeared. The Hearing Officer, Roy Andes, Agency Legal Services, held that there was no need to prepare a written report since no members of the public were present. He then adjourned the hearing and remanded the matter to the Department for further proceedings in compliance with the Montana Administrative Procedure Act. No other comments or testimony were received.

4. The authority for the rule is § 16-1-303, MCA, and the rule implements §§ 16-3-306, MCA.

IN THE MATTER OF THE AMEND-	)	NOTICE OF AMENDMENT of Rule
MENT of Rule 42.12.203 re-	)	42.12.203 relating to inter-
lating to interquota area	)	quota area transfers of all-
of all-beverages licenses.	)	beverages licenses.


TO: All Interested Persons:

1. On November 10, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.12.203 relating to interquota area transfers of all-beverages licenses at pages 1650 through 1652 of the 1983 Montana Administrative Register, issue number 21. Notice of Public Hearing was given at page 1915 of the 1983 MAR, issue no. 24.

2. The Department has amended rule 42.12.203 as proposed.

3. On January 20, 1984, a public hearing was held to consider this matter. The hearing was held at the request of the Montana Tavern Association. However, MTA withdrew its request by letter received January 19, 1984. On January 20, 1984, the Department held the hearing as noticed. No members of the public appeared. The Hearing Officer, Roy Andes, Agency Legal Services, held that there was no need to prepare a written report since no members of the public were present. He then adjourned the hearing and remanded the matter of the Department for further proceedings in compliance with the Montana Administrative Procedure Act. No other comments or testimony were received.

4. The authority for the rules is § 16-1-303, MCA, and the rule implements §§ 16-4-201, 16-4-204, and 16-4-502, MCA.


ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 02/06/84

3-2/16/84

Montana Administrative Register

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

In the matter of the repeal	)	NOTICE OF THE REPEAL OF
of Rules 46.5.613 and	)	RULES 46.5.613, AND
46.5.617; the adoption of	)	46.5.617; THE ADOPTION OF
Rules 46.5.630, 46.5.632,	)	RULES 46.5.630, 46.5.632,
46.5.635 and 46.5.636; and	)	46.5.635 AND 46.5.636; AND
the amendment of Rules	)	THE AMENDMENT OF RULES
46.5.612, 46.5.614, and	)	46.5.612, 46.5.614 AND
46.5.622 pertaining to	)	46.5.622 PERTAINING TO
licensing of child care	)	LICENSING OF CHILD CARE
agencies.	)	AGENCIES

TO: All Interested Persons

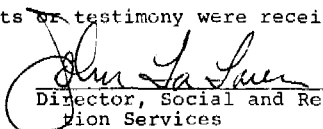
1. On December 15, 1983, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rules 46.5.613 and 46.5.617; the adoption of Rules 46.5.630, 46.5.632, 46.5.635 and 46.5.636; and the amendment of Rules 46.5.612, 46.5.614, and 46.5.622 pertaining to licensing of child care agencies at page 1804 of the Montana Administrative Register, issue number 23.

2. The Department has repealed Rules 46.5.613 and 46.5.617 as proposed.

3. The Department has adopted Rules 46.5.630, CHILD CARE AGENCY, TREATMENT PROGRAM; 46.5.632, CHILD CARE AGENCY, MANAGEMENT; 46.5.635, CHILD CARE AGENCY, EDUCATION; and 46.5.636, CHILD CARE AGENCY, RECREATION as proposed.

4. The Department has amended Rules 46.5.612, 46.5.614 and 46.5.622 as proposed.

5. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ February 6 _____, 1984.

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

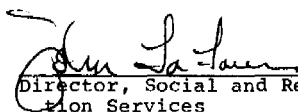
In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.12.3803	)	RULE 46.12.3803 PERTAINING
pertaining to medical serv-	)	TO MEDICAL SERVICES
ices; medically needy income)	
standards)	

TO: All Interested Persons

1. On December 29, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to medical services; medically needy income standards at page 1916 of the Montana Administrative Register, issue number 24.

2. The Department has amended Rule 46.12.3803 as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State February 6, 1984.

VOLUME NO. 40

OPINION NO. 31

CITIES AND TOWNS - A city with general government powers has no authority to establish a civil penalty and collection system for parking offenses;

STATUTES - Penal statutes must be strictly construed;
MONTANA CODE ANNOTATED - Sections 7-1-4124, 7-5-4207, 61-12-101;

MONTANA CONSTITUTION - Article II, section 22; Article II, section 28; Article XI, section 4.

HELD: A city with general government powers may not establish a civil penalty and collection system for motor vehicle parking offenses.

18 January 1984

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

Dear Mr. Nugent:

You have requested my opinion on the following question:

May a city with general government powers establish a civil penalty and collection system for motor vehicle parking offenses?

The system you propose would include a review board to hear appeals of parking offense citations prior to the municipality's actually filing suit in court for collection of outstanding fines. You also inquire whether, assuming the establishment of such a system is permissible, it may include escalating fine provisions, as well as a requirement that court costs be awarded to the city if a lawsuit is necessary for collection of unpaid fines.

Your request for an opinion arose as a result of the Montana Supreme Court's holding in City of Missoula v. Shea, 40 St. Rptr. 91, 661 P.2d 410 (1983). The Court

held that the escalating fine provisions in Missoula's parking ordinances, which increased the fine for failure to make payment within the time limits prescribed, violated article II, section 28 of the Montana Constitution. That section provides, in pertinent part:

Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation....

The Court noted, however, that "such a scheme [escalating fine provisions] may be acceptable in enforcing civil penalties." Shea, 40 St. Rptr. at 99, 661 P.2d at 416.

You indicate in your letter that Missoula does not have self-government powers. Article XI, section 4 of the Montana Constitution provides that cities without self-government powers have only those powers expressly granted or necessarily implied by law. There is no express statutory authority for establishment by a city of a civil penalty and collection system for parking offenses. Section 7-1-4124(1), MCA, states that a municipality with general powers may, subject to the provisions of state law, enact ordinances and resolutions. Section 61-12-101(1), MCA, permits local authorities to regulate the standing or parking of vehicles. Section 7-5-4207, MCA, provides:

The city or town council has power to impose fines and penalties for the violation of any city ordinance, but no fine or penalty may exceed \$500 and no imprisonment may exceed 6 months for any one offense.

Article II, section 22 of the Montana Constitution prohibits the imposition of "excessive fines." The section is identical to article III, section 20 of the 1889 Montana Constitution. In a case construing that provision of the 1889 Constitution the Court noted that "[a] fine, in the sense in which the term is used in the Constitution, is a penalty exacted by the state for some criminal offense." Daily v. Marshall, 47 Mont. 377, 399, 133 P. 681, 687 (1913). A "penalty" has been defined as "a sum of money which the law exacts the payment of by way of punishment for doing some act which is prohibited, or the omission to do some act which is required to be done." Hidden Hollow Ranch v. Collins,

146 Mont. 321, 326, 406 P.2d 365, 368 (1965). Section 7-5-4207, MCA, is the only express legislative authority that I have found for imposition of a fine or penalty by a city as punishment for a parking offense. In your letter, you note that the statute does not expressly refer to civil or criminal fines and penalties. Therefore, in your view, imposition of a civil fine or penalty would be consistent with the provisions of the statute. I cannot agree with you. Section 7-5-4207, MCA, is clearly penal in nature. See State Department of Livestock v. Sand Hills Beef, Inc., 196 Mont. 77, 639 P.2d 480 (1981). Penalties are not favored, and statutes which permit assessment of penalties must be strictly construed, and may not be extended by construction. Shipman v. Todd, 131 Mont. 365, 368, 310 P.2d 300, 302 (1957).

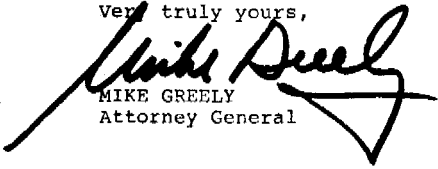
The intent of the Legislature governs the interpretation of a statute. Furthermore, its intent must, if possible, be ascertained from the plain meaning of the words used. Eaker v. Southwestern Railway Company, 176 Mont. 364, 578 P.2d 724 (1978). The obvious intent of the Legislature in enacting section 7-5-4207, MCA, was to empower a municipality to impose a fine or imprisonment as punishment for the violation of an ordinance. The role of a court in construing a statute is simply to ascertain and declare its substance, and not to insert what has been omitted. Chennault v. Sager, 37 St. Rptr. 857, 610 P.2d 173 (1980). If the Legislature had intended to provide that a fine for violation of a municipal ordinance could be recovered in a civil action, it must be presumed that it would have put express language to that effect in the statute. No such language appears in section 7-5-4207, MCA. Fundamental rules of statutory construction, and the requirement that penal statutes must be strictly construed, compel me to conclude that a municipality with general government powers may not establish a civil penalty and collection system for parking ordinance violations, such as the one you have proposed. I express no opinion here on the authority of self-governing cities to do so.

This conclusion makes it unnecessary for me to answer your related questions concerning escalating fine provisions and court costs.

THEREFORE, IT IS MY OPINION:

A city with general government powers may not establish a civil penalty and collection system for motor vehicle parking offenses.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40

OPINION NO. 32

CITY COUNCILMEN - Conflict of interest, public contracts, subcontracts;
CONFLICT OF INTEREST - Public contracts, municipal officials;
CONTRACTS - Conflict of interest, public contracts, municipal officials;
MUNICIPAL GOVERNMENT - Conflict of interest, public contracts, subcontracts;
PUBLIC OFFICERS - Conflict of interest, city councilmen, public contracts, subcontracts;
SUBCONTRACTS - Bidding requirements, city councilmen, conflict of interest, public contracts;
MONTANA CODE ANNOTATED - Sections 2-2-125, 2-2-201, 7-5-4109, 7-5-4302, 45-7-401;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 28.

- HELD: 1. A subcontract between a corporation, in which a city councilman is a major shareholder, and a prime contractor on a city project is not a "contract" under section 2-2-201, MCA.
2. A contract awarded to a prime contractor by a city council is not a "contract" under section 2-2-201, MCA, when the prime contractor was selected in compliance with section 7-5-4302, MCA, as the lowest responsible bidder after bid advertisements.
3. A subcontract between a corporation, in which a city councilman is a major shareholder, and a prime contractor on a city project is not a "contract" under section 7-5-4109, MCA.
4. A contract awarded to a prime contractor by a city council is not a "contract" under section 7-5-4109, MCA, when the prime contractor was selected in compliance with section 7-5-4302, MCA, as the lowest responsible bidder after bid advertisements.
5. The provisions of section 7-5-4302, MCA, do not apply to the awarding of a subcontract by a prime contractor on a city project.

6. Section 45-7-401, MCA, is a remedial provision and does not create substantive duties or obligations for public servants.

27 January 1984

D. W. McKenna
City Attorney
P.O. Box 389
Hamilton MT 59840

Dear Mr. McKenna:

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

Whether a city councilman violates sections 2-2-201, 7-5-4109, 7-5-4302 and/or 45-7-401, MCA, (1) when a corporation, of which he is a major shareholder, enters into a subcontract with the prime contractor on a city project; and (2) the prime, or principal, contract has been entered into consistent with section 7-5-4302, MCA.

I.

Section 2-2-201, MCA, provides, in part: "Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof must not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees...." (Emphasis added.) Section 2-2-201(2), MCA, defines the term "contract" and excludes from regulation "contracts awarded to the lowest responsible bidder based on competitive bidding procedures...." The issue presented under section 2-2-201, MCA, is whether either the subcontract or the prime contract falls within the meaning of the term "contract" in that section.

As used in section 2-2-201, MCA, the term "contract" clearly includes only contracts to which public entities are parties. Conversely, the term does not apply to contractual undertakings, such as construction

subcontracts, entered into between nonpublic entities and other persons. Cf. United States v. Mattingly, 344 F. Supp. 459, 460-61 (W.D. Ky. 1972) (the term "contracts" in 40 U.S.C. § 270a refers to contracts between the United States government and prime contractors); J. W. Bateson Company, Inc. v. United States, 434 U.S. 586 (1978) (the term "subcontractor" in 40 U.S.C. § 270a does not include sub-subcontractors). Thus, the subcontract involved here does not constitute a "contract" under section 2-2-201, MCA.

Section 7-5-4302, MCA, provides a detailed procedure for awarding city contracts to the lowest responsible bidder after advertisement for bids. Because the prime contract here was awarded in compliance with section 7-5-4302, MCA, the requirements of section 2-2-201(2)(a), MCA, have been satisfied. The prime contract does not, therefore, constitute a "contract" under section 2-2-201, MCA. I express no opinion, however, as to whether a city official may, by virtue of a subcontract with a prime contractor, "be interested in" a "contract," as those terms are used in section 2-2-201, MCA, when the principal contract has not been awarded to the lowest responsible bidder based on competitive bidding procedures.

II.

Section 7-5-4109, MCA, provides: "The mayor, any member of the council, any city or town officer, or any relative or employee thereof must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office." I recently concluded that the definition of "contract" in section 2-2-201, MCA, is properly incorporated into section 7-5-4109, MCA. 40 Op. Att'y Gen. No. 28 (1983). Consequently, neither the subcontract nor the prime contract involved here falls within the latter section's prohibition for the reasons set forth in my analysis of section 2-2-201, MCA, above.

III.

Section 7-5-4302, MCA, clearly has application only to contracts which a city council directly enters into. It therefore does not control subcontracts which the prime contractor may subsequently issue.

IV.

Section 45-7-401, MCA, is a remedial provision to be used concerning allegations of official misconduct. See State v. DeGeorge, 173 Mont. 35, 566 P.2d 59 (1977); State v. Cole, 174 Mont. 380, 571 P.2d 87 (1977). It does not establish additional substantive duties or obligations for public servants.

V.

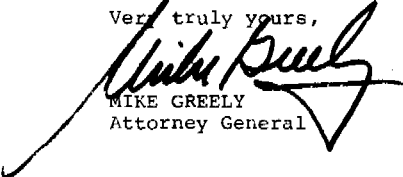
Finally, you did not inquire concerning possible violation of section 2-2-125(2)(a), MCA, and this opinion does not reach the issues which may be presented under that section. See generally 40 Op. Att'y Gen. No. 28 (1983).

THEREFORE, IT IS MY OPINION:

1. A subcontract between a corporation, in which a city councilman is a major shareholder, and a prime contractor on a city project is not a "contract" under section 2-2-201, MCA.
2. A contract awarded to a prime contractor by a city council is not a "contract" under section 2-2-201, MCA, when the prime contractor was selected in compliance with section 7-5-4302, MCA, as the lowest responsible bidder after bid advertisements.
3. A subcontract between a corporation, in which a city councilman is a major shareholder, and a prime contractor on a city project is not a "contract" under section 7-5-4109, MCA.
4. A contract awarded to a prime contractor by a city council is not a "contract" under section 7-5-4109, MCA, when the prime contractor was selected in compliance with section 7-5-4302, MCA, as the lowest responsible bidder after bid advertisements.
5. The provisions of section 7-5-4302, MCA, do not apply to the awarding of a subcontract by a prime contractor on a city project.

6. Section 45-7-401, MCA, is a remedial provision and does not create substantive duties or obligations for public servants.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40

OPINION NO. 33

COUNTIES - County property, lease of, distribution of revenues from;
COUNTY COMMISSIONERS - Powers, property of county, lease revenues, distribution of;
LANDLORD AND TENANT - Lease of building, county property;
PUBLIC FUNDS - Distribution of revenues, leases of county property;
MONTANA CODE ANNOTATED - Sections 7-1-2103, 7-5-2101, 7-8-2201, 7-8-2231, 7-8-2232.

HELD: If the sale of a county building is not being attempted, the board of county commissioners may use monies obtained from tenants in the county-owned building to defray the operational and maintenance costs of such building.

1 February 1984

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

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

May the board of county commissioners use monies obtained from tenants in a county-owned building to defray the operational and maintenance costs of such building?

As you point out in your opinion request, the Montana statutes apparently conflict on this question.

Section 7-8-2201, MCA, authorizes county commissioners to purchase such property; that statute also authorizes commissioners to "preserve, take care of, manage and control" the property. Sections 7-1-2103 and 7-5-2101, MCA, support this broad view of county commissioners' powers.

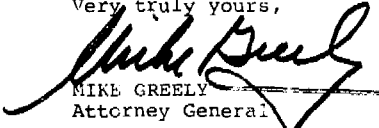
However, section 7-8-2232, MCA, appears to restrict the powers of county commissioners. That statute provides that the county treasurer shall distribute all revenue derived from certain leases of county property. This revenue is to be distributed on the basis of the tax levy for the preceding calendar year. However, section 7-8-2232, MCA, is restricted in its application. The statute is limited to leases authorized by section 7-8-2231, MCA. That statute authorizes the leasing of county property "which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had." (Emphasis added.) A reasonable interpretation of this restriction is that the Legislature intended that since county property that could not be sold would not produce tax revenues, that lease revenue from such property be distributed in the same manner as tax revenue.

Chapter 100 of the 1931 Montana Laws, where these statutes were originally enacted, is also instructive. Chapter 100 was a 30-part enumeration of the powers of county commissioners. Section 1, subsection 8 (now section 7-8-2201, MCA), is a general statute authorizing county commissioners to acquire and manage real or personal property. It is set among other general sections authorizing the acquisition or erection of public buildings. Subsection 28 (now split into sections 7-8-2231 and 7-8-2232, MCA), is a specific statute setting procedure for the lease of property which cannot be sold immediately. It is set among other specific statutes dealing with health and finances. While the specific statute does take precedence over the general, the specific statute is also limited in its terms. I conclude that the application of section 7-8-2232, MCA, is limited to the distribution of revenue from the leases of county property that county commissioners are trying unsuccessfully to sell.

THEREFORE, IT IS MY OPINION:

If the sale of a county building is not being attempted, the board of county commissioners may use monies obtained from tenants in the county-owned building to defray the operational and maintenance costs of such building.

Very truly yours,



MIKE GREELY
Attorney General

Montana Administrative Register

3-2/16/84

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 December 31, 1983. This table includes those rules adopted during the period October 1, 1983 through December 31, 1983, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1983, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1983 and 1984 Montana Administrative Registers.

ADMINISTRATION, Department of, Title 2

I-XIII Discipline Handling, p. 1483, 1682
I-XXII Purchasing Rules, p. 1564, 1918
I-XXXI Procedures of the Office of the Workers' Compensation Court, p. 1394, 1715
I-XIX Veteran's and Handicapped Person's Employment Preference, p. 93
2.21.123 and other rules - Sick Leave, p. 1129, 1455

AGRICULTURE, Department of, Title 4

I-XXI Montana Agricultural Loan Authority Rules, p. 1683
4.12.3402 Seed Laboratory Reports - Enforcement, p. 1489, 1920

STATE AUDITOR, Title 6

I Defining General Business Practices or General Course of Business Practice, p. 1219, 1533
I-IV Registration Exemption for Regulation D Securities Offerings and Creating Examination, Reporting and Record Keeping Requirements for Investment Advisors, 1582, 19
I-V Identical Nonforfeiture Values Under an Employer Sponsored Retirement Benefit Program, p. 1492

- I-V Emergency Rules - Identical Nonforfeiture Values Under An Employer Sponsored Retirement Benefit Program, p. 1527
- XVI Public Adjusters, p. 1495, 1813
- I-XV Public Adjusters, p. 1221, 1530

COMMERCE, Department of, Title 8

(Board of Athletics)

- I-XL Professional or Semiprofessional Wrestling or Boxing Matches or Exhibitions Which Involve a Prize or Purse, p. 108

(Board of Cosmetologists)

- 8.14.816 and other rules - Salons - Examination - Fee Schedule - Electrology Schools - Sanitary Rules, p. 1225, 1815
- 8.14.1002 Applications for Electrolysis - Examiners - Student Examinations, p. 1766, 245

(Board of Dentistry)

- I-XIX Standards for Dentists Administering Anesthesia, p. 1768, 1861

- 8.16.602 Allowable Functions for Dental Auxiliaries, p. 1693

(Hearing Aid Dispensers)

- 8.20.401 Traineeship Requirements and Standards, p. 1132, 1457

(Board of Horse Racing)

- 8.22.303 and other rules - Filming of Pari-mutuel Events and Financial Obligations of Pari-Mutuel Licensees - Fines Levied by Jockeys - Unclaimed Tickets, p. 1775

- 8.22.325 Hearing Examiner, p. 1457

(Board of Landscape Architects)

- 8.24.405 and other rules - Examinations - Fee Schedules, p. 1695, 24

(Nursing Home Administrators)

- 8.34.414 Examinations, p. 1282, 1663

(Board of Optometrists)

- I Disciplinary Actions, p. 2
- 8.36.406 General Practice Requirements, p. 1410, 1717
- 8.36.407 Unprofessional Conduct-Violations, p. 1

(Physical Therapy Examiners)

- 8.42.401 and other rules - Applications - Examinations - Fees - Temporary Licenses - Foreign Trained Applicants, p. 1134, 1664

(Polygraph Examiners)

- I-VI Licensure, p. 1589, 1921

(Private Investigators and Patrolmen)

- I-XXVI Public Participation - Definitions - Employment - Applications - Experience Requirements - Examinations - Identification - Insurance - Uniforms License Renewal - Code of Ethics - Complaint Procedures, p. 1863
- 8.50.101 Organization, p. 1862

- 8.50.201 Procedural Rules, p. 1863
- 8.50.401 and other rules- Rules Governing the Board of Private Security Patrolmen and Investigators, p. 1863
- 8.50.416 License Renewal - Fee Schedule, p. 1414, 1718 (Board of Psychologists)
- 8.52.616 Fee Schedule, p. 1497, 1816 (Radiologic Technologists)
- 8.56.402 and other Rule - Applications - Fee Schedule, p. 1284, 1923
- 8.56.407 Renewals, p. 1588, 1922
- 8.56.409 Fee Schedule, p. 1592, 1923 (Renewals)
- I 8.44.405 Renewal Date for All Barber Licenses, p. 1764, 245 and other rules - License Renewal Dates for Plumbers, Professional Engineers and Land Surveyors, Optometrists, p. 1412, 1717 (Board of Social Work Examiners)
- I-VI Board Organization - Procedural Rules - Definitions - Licensure Requirements - Application Procedure - Fee Schedule, p. 131 (Board of Veterinarians)
- 8.64.501 Application Requirements, p. 1286, 1663 (Board of Weights and Measures)
- 8.77.102 Fees for Testing and Certification, p.1698, 24 (Milk Control Division)
- 8.79.101 and other rule -Transactions Involving the Purchase and Resale of Milk Within the State, p. 1140, 1817 (Board of Milk Control)
- 8.86.301 Pricing Rules, p. 1142, 1459
- 8.86.301 Pricing Rules, Pooling Rule p. 1498, 1700 (County Printing)
- 8.91.303 and other rule - Official Publications and Legal Advertising - Schedule of Prices, p. 1924 (Financial Bureau)
- I Retention of Bank Records, p. 1458
- I Semi-Annual Assessment for State Banks, Trusts and Investment Companies, p. 1783, 134 (Coal Board)
- 8.101.301 and other rules - Policy Statement - Preapplication Form - Agreement Form - Submittal Deadlines - Water and/or Sewer Systems Provided by Districts, 1416, 1826 (Public Contractors)
- I Definitions, 1238, 1535 (Health Facility Authority)
- I-VIII Montana Health Facility Authority Rules, p. 1288, 1719 (Montana Economic Development Board)
- I-IX General Provisions and Application Procedures - Approval of Financial Institutions - Confidentiality - False or Misleading Statements - Unified Application Procedures and Applications -

- Service Charge - Fee Schedule - Non-Discrimination,
p. 1880
- X-XXIII Montana In-State Investment Fund - Policy -
Eligibility Criteria - Preferences -Application
Procedures - Fees - Loans - Commitment of Funds, p.
1888
- I-X Rules Pertaining to Montana Economic Development
Board, p. 1509, 1820

EDUCATION, Title 10

- (Superintendent of Public Instruction)
- 10.16.102 and other rules - Special Education Programs, p.
1148, 1668
- 10.16.903 and other rules - Special Education, p. 1150, 1669
- 10.41.101 and other rules - Vocational Education - General
Rules - Postsecondary Vocational Education -
Vocational Education in Secondary Schools, p. 135
- (Board of Public Education)
- I-IV School for Deaf and Blind Foundation, p. 1517, 1926
- 10.55.101 and other rules - Accreditation Standards of the
Board of Education, p. 5
- 10.55.210 School Morale, p. 4
- 10.58.101 and other rules - Standards for State Approval of
Teacher Education Programs Leading to Interstate
Reciprocity of Teacher Certification, p. 176
- 10.64.421 Mirrors, p. 1519

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Outfitters and Professional Guides, p. 1785, 246
- I Disabled Persons, p. 236
- I Acceptable License Agent Security, p. 237
- I-IV Game Bird Farms, p. 1428, 247
- I-IV Fur Farms, p. 1426, 247
- I-VIII Game Farms, p. 1422, 247
- I-IX Captive Breeding of Raptors, p. 1430, 1829
- 12.3.202 Classes of License Agents, p. 236
- 12.5.401 Oil and Gas Leasing Policy for Department-
Controlled Lands, p. 1594
- 12.6.801 Boating Closures, p. 1597
- 12.6.901 Water Safety Regulations, p. 1597
- 12.7.101 Commercial Fishing Permits, p. 1420, 1927
- 12.9.202 Brinkman Game Preserve, p. 1602, 256

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I Certificate of Need - Health Care Facilities, p.
1295, 1671
- I Certificate of Need - Psychiatric Hospital
Services, p. 1895
- I Minimum Standards for a Hospice Program, Licensing
and Certification, p. 1159, 1460

- I-VIII Cesspool, Septic Tank and Privy Cleaners, p. 1611, 258
- I-XIV End-Stage Renal Disease Program, p. 1603, 41
- 16.8.1102 Air Quality Permit Requirements, p. 239
- 16.10.305 Sale of Milk and Milk Products in Food Processing Establishments, p. 1701, 26
- 16.14.801 and other rules - Cleaning of Cesspools, Septic Tanks and Privies, p. 241
- 16.18.101 and other rules - Water and Wastewater Operators, p. 1011, 1720
- 16.32.103 and other rules - Certificate of Need Application Forms and Annual Reporting Forms for Health Care Facilities, p. 1610, 27
- 16.44.104 and other rules - Hazardous Waste Management - Permitting Requirements - Applications - Conditions - Financial Test, p. 1703, 265

HIGHWAYS, Department of, Title 18

- 18.5.106 Design Requirements for Access Driveways, p. 1618, 47
- 18.6.202 Outdoor Advertising Definitions, p. 1725
- 18.7.241 Forms for Utility Occupancy of Highway Right-of-Way, p. 1897
- 18.8.502 and other rules - Trip Permits - Insurance Requirements - Regulations Covering Movement of Oversize Homes and Buildings, p. 11
- 18.8.516 Haystack Movers - Commercial Self-Propelled, p. 11
- 18.8.1001 Mobile Home - Oversize Permits, p. 11

INSTITUTIONS, Department of, Title 20

- 20.3.201 and other rules - Approval of Chemical Dependency Programs - Guidelines for County Chemical Dependency Plans and Certification Systems for Chemical Dependency Personnel, p. 1162, 1463
- 20.7.102 Emergency Rule - Prisoner Application Procedure, General Statute Requirements, p. 1084, 1899

LABOR AND INDUSTRY, Department of, Title 24

- I-V Emergency Rules - Assessment on Employers in Lieu of Contributions and the Apportionment of Monies Received by Experience Rated Employers, p. 1293
- I-VI Assessment on Employers Making Payments in Lieu of Contributions and the Apportionment of Monies Received by Experience Rated Employers, p. 1240, 1674
- (Board of Labor Appeals)
- I Standards and Procedure for Reconsideration of Decisions, p. 938, 1464
- I-XVII Displaced Homemaker Program, p. 1536
- (Human Rights Commission)

- I-VII Maternity Leave, p. 1017
24.9.226 Prehearing; Conciliation, p. 1014, 1833
 (Board of Personnel Appeals)
I-II Disqualification of Hearing Examiners - Dismissal
 of Complaint, p. 1708
24.26.102 and other rules - Freedom from Interference,
 Restraint, Coercion, Retaliation - Employer Counter
 Petition - Petition for Decertification - Complaint
 - Answer - Exceptions - Petitions, p. 1708
(Workers' Compensation Division)
I-VII Licensing Requirements for Hoisting Operators and
 Crane Operators, p. 1300, 1728

STATE LANDS, Department of, Title 26

- I-IV Certification of Coal or Uranium Mine Blasters, p.
 1901
I-II Assessment and Waiver of Civil Penalties, p. 1905
26.4.1206 Notices and Cessation Orders: Service, p. 1908
26.4.1207 and other rules - Notices of Noncompliance and
 Cessation Orders: Informal Hearings - Effect of
 Inability to Comply - Continuation of Health and
 Safety Related Activities, p. 1908

LIVESTOCK, Department of, Title 32

- I-VI Brucellosis Testing of Animals, p. 1790, 268
32.3.203 and other rules - Importation of Animals and
 Biologics, p. 1787, 267
32.2.401 Livestock License, Permit and Miscellaneous Fees,
 p. 1795, 266
32.3.406 Emergency Rule - Testing of Animals, p. 1540

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- (Board of Oil and Gas Conservation)
I-XXXIII Procedural Rules, p. 1620

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-II Customers' Liability for Incorrect Billings, p.
 1242, 1739
I-V Electric and Gas Line Extensions, p. 1309, 1910
I-XVI Regulation of Intrastate and Interstate Carriers,
 p. 1313, p. 1735
38.3.119 and other rules - Regulation of Intrastate and
 Interstate Carriers, p. 1313, 1735
38.4.142 and other rules - Intrastate Rail Rate Proceedings,
 p. 1433
38.5.201 and other rules - Compensation for Consumer
 Intervenors in PURPA-Related Proceedings, p. 1312,
 1738

REVENUE, Department of, Title 42

- I Determination of License Quota Areas, p. 1655, 1928
- I Deductions from the Net Proceeds of Nonmetallic Mines, p. 1441
- I Deductions for Small Business Donations of Computer Equipment to Schools, p. 1437, 1744
- I Deductions for Corporate Donations of Computer Equipment to Schools, p. 1439, 1744
- I Deduction of Windfall Profits Tax From Net Proceeds, p. 1326, 242, 243
- I Deduction from Corporation License Tax for Sale of Land to Beginning Farmers, p. 1796
- I Deduction from Individual Income Tax for Sale of Land to Beginning Farmers, p. 1798
- I Imputed Value of Coal, p. 1329, 1834
- I Voluntary Refund Checkoff for Nongame Wildlife Fund, p. 1331, 1744
- I Voluntary Refund Checkoff for Nongame Wildlife, p. 970, 1328
- I Deduction for Insurance, Welfare, Retirement, Mineral Testing, Security and Engineering, p. 1039, 1835
- I Five Year Statute of Limitations for Net Proceeds of Oil and Gas, p. 1043, 1545
- I-II Formula for Adjusting Interest Income Exempt Under Federal Law, p. 1045, 1547
- I-III Wholesale Distributors, Obligations, Collection of Annual License Fee, p. 1521, 1929
- 42.11.111 State Liquor Identification Stamp, p. 1649, 1928
- 42.12.129 Determination of Proximity to a Place of Worship or School, p. 1653, 1914
- 42.12.203 Inter-Quota Area Transfers of All-Beverage Licenses, p. 1650, 1915
- 42.12.321 and other rule - Special Permits, p. 1657, 1913
- 42.13.302 Brewer Storage Depots, p. 1648, 1928
- 42.15.421 Standard Deduction, p. 954, 1465
- 42.15.424 Deductions for Expenses to Allow Taxpayer to be Employed, p. 945, 1465
- 42.15.504 Investment Tax Credit, p. 1021, 1542
- 42.17.103 Wages, p. 952, 1465
- 42.20.141 and other rules - Appraisal of Agricultural Lands, p. 972
- 42.21.112 Mobile Homes, p. 1047, 1544
- 42.22.101 and other rule - Assessment of Centrally Assessed Property, p. 1658, 1930
- 42.23.502 Investment Tax Credit, p. 1049, 1548
- 42.31.2101 and other rules - Definition of Public Contractor - Deduction From the Gross Receipts Tax, p. 973, 1466

SECRETARY OF STATE, Title 44

- I-VI Absentee Ballot Envelopes, p. 1660, 1802, 18

- 1.2.419 Filing, Compiling, Printer Pickup and Publication
Schedule for the Montana Administrative Register,
p. 1523, 1837

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I-IV Child Care Agency Treatment Program, p. 1804
46.5.116 Protective Services, Information System Operator,
p. 1525, 1838
46.5.505 and other rules - Licensing of Youth Foster Homes,
p. 1333, 1746
46.5.508 Foster Care Review Committee, p. 1550
46.5.612 and other rules - Licensing of Child Care Agencies,
p. 1804
46.5.801 and other rules - Licensing of Community Homes for
Persons who are Developmentally Disabled, p. 1442,
1839
46.11.101 Food Stamp Program, p. 1713
46.12.3803 Medically Needy Income Standards, p. 1916, 1933
46.14.304 Low Income Weatherization Assistance Program;
Income, p. 1341, 1751
46.25.712 and other rules - State General and Medical Relief
Assistance, p. 1810