MONTANA ADMINISTRATIVE REGISTER

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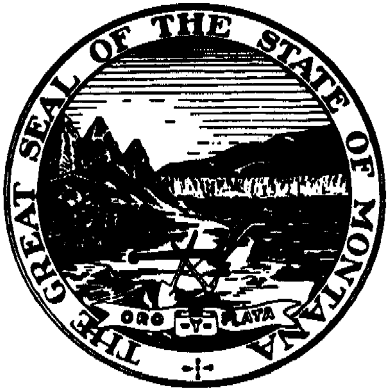

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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NOTICE SECTION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the proposed amendment of 8.30.606 concerning pre-arranged, pre-financed or prepaid funerals	)	NOTICE OF PROPOSED AMENDMENT OF 8.30.606 PRE-ARRANGED, PRE-FINANCED OR PREPAID FUNERALS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 15, 1986, the Board of Morticians proposes to amend the above-stated rule.

2. The proposed amendment of 8.30.606 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-937, Administrative Rules of Montana)

"8.30.606 PRE-ARRANGED, PRE-FINANCED OR PREPAID FUNERALS
(1) will remain the same.
(2) For purposes of these rules, the phrases "pre-need" contracts, or "pre-arrangements" shall refer to agreements or arrangements whereby and wherein, prior to death, a person, or someone on his behalf, makes a contract for the final disposition of the body, under which contract with a licensee, personal property will be delivered upon death in payment for the professional services of the funeral director, embalmer, cemetery firm, or mausoleum, columbarium corporation, which services will then be furnished."
Auth: 37-19-202, MCA Imp: 37-19-403, MCA

3. There is much confusion on what constitutes a "pre-need" or "pre-arranged" funeral because an insurance company has been trying to sell pre-arranged funeral plans to the citizens of the state and does not appear to be in compliance with insurance statutes or professional ethics of mortician or mortuary licenses. The Board proposes this "definition" for clarification purposes to assist licensees in meeting with people who plan funerals in advance.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Morticians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 12, 1986.

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 Morticians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 12, 1986.

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 40 based on the 400 licensees in Montana.

BOARD OF MORTICIANS
DENNIS DOLAN, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 4, 1986.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment) of Rule 10.55.204, Principal)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.55.204, PRINCIPAL

TO: All Interested Persons

1. On September 15, 1986, at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the amendment of Rule 10.55.204, Principal.

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

10.55.204 PRINCIPAL (1) through (2)(b) remain the same.

(c) In any school district where the combined elementary and secondary enrollment exceeds 150 but is less than 300, the superintendent may serve as half-time elementary or high school principal. The district must employ a half-time elementary or high school principal for the other unit in the district. The superintendent shall devote half-time as principal of the assigned school. Or, in any school district where the combined elementary and secondary enrollment exceeds 150 but is less than 300, and where the superintendent serves as both elementary and secondary principal, the district must employ a half-time administrative assistant. The administrative assistant shall be defined as a person who holds a bachelor's degree and presents evidence of working toward the administrator's certificate on a planned program. ~~to be completed within 5 years of first assignment. The administrative assistant shall not supervise or evaluate staff or curriculum.~~ If an administrative assistant is employed in lieu of a principal, the assistant must have already completed at least 15 credits in an approved administrative program leading to the principal endorsement. The district must ensure that the administrative assistant (intern) shows continued progress in that role within a three year period.

(d) through (g) remain the same.

AUTH: Sec. 20-7-101, MCA
IMP: Sec. 20-4-403, MCA

3. The purpose of the rule is to further define the requirements for the Administrative Assistant program and to ensure that the program can be properly regulated.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than September 12, 1986.

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

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State August 4, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.55.303, Teaching Assignments)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.55.303, TEACHING ASSIGNMENTS

TO: All Interested Persons

1. On September 15, 1986, at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the amendment of Rule 10.55.303, Teaching Assignments.

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

10.55.303 TEACHING ASSIGNMENTS (1) through (1)(d) Gifted and Talented remain the same.

Government	Social Science (10) or History (11) or Political Science (15) or History-Political Science (17)	15 quarter credits in U.S. government if endorsed in (10) or (11)

(1)(d) Guidance through (2) remain the same.

AUTH: Sec. 20-7-101, MCA
IMP: Sec. 20-4-101, 20-4-202, MCA

3. The purpose of the amendment is to allow those people who hold a history endorsement to teach government. Several school districts would benefit from the amendment.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 12, 1986.

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

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State August 4, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.57.301, Endorsement Information	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.57.301, ENDORSEMENT INFORMATION

TO: All Interested Persons

1. On September 15, 1986 at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the amendment of Rule 10.57.301, Endorsement Information.

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

10.57.301 ENDORSEMENT INFORMATION (1) and (2) remain the same.

(3) Appropriate teaching areas acceptable for certificate endorsement include: social science, history, economics, sociology, geography, political science, economics-sociology, history-political science, English, speech-communication, dramatics, journalism, elementary education, library (K-12), speech-drama, ~~French, Spanish, German, Russian,~~ Latin, foreign language, mathematics, science, physical science, reading (K-12), physics, chemistry, biology, earth science, agriculture, industrial arts, home economics, distributive education, trade and industry, business education, business education with shorthand, music (K-12), art (K-12), physical education and health (K-12), health, guidance and counseling (K-12), special education (K-12), psychology.

(4) through (8) remain the same.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-103, 20-4-106 MCA

3. The purpose of the amendment is to allow people who had received foreign language teacher training in a language other than those offered in the Montana University System to be endorsed to teach the specific language of their training.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 12, 1986.

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

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State August 4, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.58.511, Foreign Languages)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.58.511, FOREIGN LANGUAGES

TO: All Interested Persons

1. On September 15, 1986, at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the amendment of Rule 10.58.511, Foreign Languages.

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

10.58.511 FOREIGN LANGUAGES Certificate endorsements available in Montana are ~~French, Spanish, German, Russian, and Latin.~~ based on the following knowledge and performance criteria. Candidates for endorsement in any language must provide evidence of having completed an approved program in a specific language leading to teaching preparation. For the prospective teacher the program shall provide:

(1) through (11) remain the same.

AUTH: Sec. 20-2-114, MCA
IMP: Sec. 20-1-121, MCA

3. The purpose of the amendment is to allow people who had received foreign language teacher training in a language other than those offered in the Montana University System to be endorsed to teach the specific language of their training.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 12, 1986.

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

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State August 4, 1986

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

In the matter of the adoption of Rule I and amendment of Rules 46.13.302, 46.13.303, 46.13.304, 46.13.401 and 46.13.402 pertaining to low income energy assistance	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I AND AMENDMENT OF RULES 46.13.302, 46.13.303, 46.13.304, 46.13.401 AND 46.13.402 PERTAINING TO LOW INCOME ENERGY ASSISTANCE

TO: All Interested Persons

1. On September 9, 1986, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of Rule I and the amendment of Rules 46.13.302, 46.13.303, 46.13.304, 46.13.401 and 46.13.402 pertaining to low income energy assistance.

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

RULE I SUPPLEMENTAL ASSISTANCE (1) One-time supplemental assistance is available to LIEAP clients at or below 50% of Office of Management and Budget (OMB) poverty standards, as listed in ARM 46.13.303, who have paid at least 5% of their income, as defined in ARM 46.13.304, toward their home energy costs for the October 1 through April 30 heating season.

(a) Application for supplemental assistance is voluntary. All documentation necessary to process the request for supplemental assistance, including proof of client payment and amount requested, is the responsibility of the client.

(b) If they have not already done so, applicants for supplemental assistance must apply for the low income home weatherization assistance program at the time of application for supplemental assistance.

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

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

46.13.302 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS Subsections (1) through (3) remain the same.

(4) Eligible individuals living in rental housing who also receive a heating subsidy are eligible for the difference between the portion of that heating subsidy attributable to the seven (7) month heating season (October through April) and

the LIEAP matrix benefit when the LIEAP matrix benefit exceeds the heating subsidy by $10.00.

Subsections (5) and (5)(a) remain the same.

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

46.13.303 TABLES OF GROSS RECEIPTS AND INCOME STANDARDS (1) The income standards in the table in subsection (2) below are ~~125%--of~~ the ~~1985~~ 1986 U.S. government office of management and budget poverty levels for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 125% of the ~~1985~~ 1986 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the ~~1985~~ 1986 poverty level are ineligible for low income energy assistance.

(2) Income standards for all households:

~~Family-Size~~	~~125%-OMB Poverty-Standard~~
~~1~~	~~$ 6,562~~
~~2~~	~~8,812~~
~~3~~	~~11,062~~
~~4~~	~~13,312~~
~~5~~	~~15,562~~
~~6~~	~~17,812~~
~~each-additional-member~~	~~2,250~~

Family Size	Poverty Guideline	50 Percent	125 Percent	150 Percent
1	$ 5,360	$ 2,680	$ 6,700	$ 8,040
2	7,240	3,620	9,050	10,860
3	9,120	4,560	11,400	13,680
4	11,000	5,500	13,750	16,500
5	12,880	6,440	16,100	19,320
6	14,760	7,380	18,450	22,140
7	16,640	8,320	20,800	24,960
8	18,520	9,260	23,150	27,780
Additional member add	1,880	940	2,350	2,820

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

46.13.304 INCOME Subsections (1) through (1)(b) remain the same.

(c) Medical and dental deductions mean all medical and dental payments for allowable costs, as described in (4), made by members of the household in the twelve months immediately preceding the month of application. Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party. Medical deductions can only be subtracted from annual gross income that is between 125% and 150% of the ~~1985~~ 1986 U.S. government office of management and budget poverty level for the particular household size. Households meeting the income standards in ARM 46.13.303(2) after this adjustment are eligible for benefits.

Subsections (1)(d) through (4)(j) remain the same.

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

46.13.401 BENEFIT AWARD MATRICES Subsections (1) through (1)(d) remain the same.

(e) PPL means Pacific Power and Light.

(f) REA means Rural Electrification Administration.

Subsections (1)(e) through (1)(g) remain the same in text but will be recategorized as (1)(g) through (1)(i).

Subsection (2) remains the same.

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICTS I, II & III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Rosebud, Treasure, Custer, Fallon, Powder River and Carter Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	373 ~~369~~	325 ~~259~~	347 ~~314~~	456 ~~446~~	397 ~~312~~	424 ~~379~~
Fuel Oil	439 ~~647~~	382 ~~453~~	409 ~~550~~	536 ~~789~~	466 ~~552~~	498 ~~670~~
Propane	503 ~~672~~	438 ~~471~~	468 ~~572~~	614 ~~821~~	535 ~~575~~	571 ~~698~~
Electricity R.E.A.	599 ~~560~~	521 ~~392~~	557 ~~476~~	732 ~~684~~	637 ~~479~~	681 ~~582~~
Electricity M.D.U.	916 ~~935~~	797 ~~654~~	852 ~~795~~	1120 ~~1142~~	974 ~~808~~	1041 ~~971~~
Coal ~~(tons)~~	238 ~~242~~	207 ~~170~~	221 ~~206~~	297 ~~303~~	258 ~~212~~	276 ~~258~~
Wood ~~(cords)~~	257 ~~263~~	224 ~~184~~	239 ~~223~~	322 ~~328~~	280 ~~230~~	299 ~~279~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	516 ~~501~~	449 ~~350~~	480 ~~425~~	581 ~~560~~	505 ~~392~~	540 ~~476~~
Fuel Oil	609 ~~897~~	530 ~~628~~	567 ~~762~~	683 ~~1005~~	594 ~~703~~	635 ~~854~~
Propane	698 ~~933~~	607 ~~653~~	649 ~~793~~	782 ~~1045~~	680 ~~732~~	727 ~~889~~
Electricity R.E.A.	832 ~~778~~	724 ~~544~~	774 ~~661~~	932 ~~871~~	811 ~~610~~	867 ~~740~~
Electricity M.D.U.	1273 ~~1298~~	1107 ~~909~~	1183 ~~1104~~	1425 ~~1454~~	1240 ~~1018~~	1326 ~~1236~~
Coal ~~(tons)~~	356 ~~364~~	310 ~~255~~	331 ~~309~~	416 ~~424~~	362 ~~297~~	387 ~~361~~
Wood ~~(cords)~~	386 ~~394~~	336 ~~276~~	359 ~~335~~	450 ~~460~~	392 ~~322~~	419 ~~391~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Blaine Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	288 ~~310~~	251 ~~223~~	268 ~~270~~	353 ~~400~~	308 ~~280~~	329 ~~340~~
Fuel Oil	413 ~~658~~	359 ~~461~~	384 ~~559~~	503 ~~802~~	438 ~~562~~	468 ~~682~~
Propane	543 ~~706~~	472 ~~494~~	505 ~~600~~	663 ~~862~~	577 ~~603~~	616 ~~733~~
Electricity	635 ~~588~~	553 ~~411~~	591 ~~500~~	777 ~~718~~	676 ~~503~~	722 ~~611~~
Coal ~~(tons)~~	252 ~~254~~	219 ~~178~~	234 ~~216~~	315 ~~318~~	274 ~~223~~	293 ~~270~~
Wood ~~(cords)~~	273 ~~276~~	238 ~~193~~	254 ~~234~~	341 ~~345~~	297 ~~241~~	317 ~~293~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	401 ~~459~~	349 ~~322~~	373 ~~391~~	452 ~~523~~	393 ~~366~~	420 ~~445~~
Fuel Oil	572 ~~912~~	498 ~~639~~	532 ~~775~~	641 ~~1022~~	558 ~~716~~	596 ~~869~~
Propane	753 ~~980~~	655 ~~686~~	701 ~~833~~	844 ~~1097~~	734 ~~768~~	785 ~~933~~
Electricity	883 ~~816~~	768 ~~571~~	821 ~~694~~	988 ~~914~~	860 ~~640~~	919 ~~777~~
Coal ~~(tons)~~	378 ~~382~~	329 ~~267~~	352 ~~324~~	441 ~~445~~	384 ~~312~~	410 ~~378~~
Wood ~~(cords)~~	410 ~~413~~	356 ~~289~~	381 ~~351~~	478 ~~482~~	416 ~~338~~	444 ~~410~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

Glacier, Toole, Pondera, Teton,
Chouteau and Cascade Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas G.F.G.	295 ~~312~~	257 ~~218~~	274 ~~265~~	360 ~~390~~	314 ~~273~~	335 ~~331~~
Natural Gas M.P.C.	247 ~~276~~	215 ~~193~~	230 ~~235~~	303 ~~347~~	264 ~~243~~	282 ~~295~~
Fuel Oil	331 ~~509~~	288 ~~412~~	308 ~~501~~	404 ~~718~~	351 ~~503~~	375 ~~611~~
Propane	552 ~~612~~	480 ~~429~~	513 ~~521~~	674 ~~748~~	586 ~~524~~	627 ~~636~~
Electricity	545 ~~510~~	474 ~~357~~	507 ~~434~~	666 ~~623~~	579 ~~436~~	619 ~~530~~
Coal ~~(tons)~~	216 ~~221~~	188 ~~155~~	201 ~~188~~	270 ~~276~~	235 ~~193~~	251 ~~235~~
Wood ~~(cords)~~	234 ~~239~~	204 ~~167~~	218 ~~203~~	293 ~~299~~	254 ~~209~~	272 ~~254~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas G.F.G.	408 ~~446~~	355 ~~312~~	379	459 ~~506~~	399 ~~354~~	427 ~~430~~
Natural Gas M.P.C.	343 ~~399~~	299 ~~279~~	319 ~~339~~	387 ~~454~~	337 ~~310~~	360 ~~386~~
Fuel Oil	459 ~~817~~	399 ~~572~~	427 ~~694~~	514 ~~915~~	447 ~~641~~	478 ~~778~~
Propane	766 ~~850~~	666 ~~595~~	712 ~~723~~	858 ~~952~~	747 ~~667~~	798 ~~809~~
Electricity	756 ~~708~~	658 ~~496~~	703 ~~602~~	847 ~~793~~	737 ~~555~~	788 ~~674~~
Coal ~~(tons)~~	324 ~~331~~	282 ~~232~~	301 ~~282~~	378 ~~386~~	329 ~~270~~	352 ~~328~~
Wood ~~(cords)~~	351 ~~359~~	305 ~~251~~	326 ~~305~~	410 ~~419~~	356 ~~293~~	381 ~~356~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

Fergus, Judith Basin, Petroleum, Wheatland,
Golden Valley and Musselshell Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	280 ~~309~~	243 ~~216~~	260 ~~263~~	343 ~~389~~	299 ~~272~~	319 ~~331~~
Fuel Oil	427 ~~660~~	371 ~~462~~	397 ~~561~~	520 ~~804~~	453 ~~563~~	484 ~~684~~
Propane	581 ~~605~~	505 ~~423~~	540 ~~514~~	709 ~~730~~	617 ~~517~~	660 ~~628~~
Electricity	617 ~~571~~	537 ~~400~~	574 ~~485~~	754 ~~698~~	656 ~~489~~	702 ~~593~~
Coal ~~(tons)~~	245 ~~247~~	213 ~~173~~	228 ~~210~~	306 ~~309~~	266 ~~216~~	285 ~~263~~
Wood ~~(cords)~~	265 ~~268~~	231 ~~187~~	247 ~~228~~	332 ~~335~~	288 ~~234~~	308 ~~285~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	389 ~~446~~	339 ~~313~~	362 ~~380~~	439 ~~509~~	382 ~~356~~	408 ~~432~~
Fuel Oil	592 ~~914~~	515 ~~640~~	550 ~~777~~	663 ~~1025~~	577 ~~717~~	617 ~~871~~
Propane	806 ~~839~~	701 ~~587~~	750 ~~713~~	903 ~~940~~	786 ~~658~~	840 ~~799~~
Electricity	857 ~~793~~	746 ~~555~~	797 ~~674~~	960 ~~888~~	835 ~~622~~	893 ~~755~~
Coal ~~(tons)~~	367 ~~371~~	319 ~~260~~	341 ~~315~~	428 ~~433~~	373 ~~303~~	398 ~~368~~
Wood ~~(cords)~~	398 ~~402~~	346 ~~281~~	370 ~~341~~	464 ~~469~~	404 ~~328~~	432 ~~398~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

Type Fuel	1 Bedroom Home Single Family Unit	1 Bedroom Home Multi-Family Unit	1 Bedroom Home Mobile Home	2 Bedroom Home Single Family Unit	2 Bedroom Home Multi-Family Unit	2 Bedroom Home Mobile Home
Natural Gas M.D.U.	320 ~~338~~	279 ~~237~~	298 ~~288~~	392 ~~421~~	341 ~~295~~	360 ~~358~~
Natural Gas M.P.C.	233 ~~261~~	203 ~~183~~	217 ~~222~~	286 ~~320~~	249 ~~230~~	263 ~~279~~
Fuel Oil	366 ~~557~~	319 ~~390~~	341 ~~474~~	447 ~~679~~	389 ~~475~~	411 ~~577~~
Propane	402 ~~579~~	350 ~~405~~	374 ~~492~~	491 ~~707~~	427 ~~495~~	452 ~~601~~
Electricity	514 ~~482~~	448 ~~338~~	478 ~~410~~	629 ~~590~~	547 ~~413~~	578 ~~501~~
Coal ~~(tons)~~	204 ~~209~~	177 ~~146~~	190 ~~177~~	255 ~~261~~	222 ~~183~~	235 ~~222~~
Wood ~~(cords)~~	221 ~~226~~	192 ~~158~~	206 ~~192~~	276 ~~283~~	240 ~~198~~	254 ~~240~~

Type Fuel	3 Bedroom Home Single Family Unit	3 Bedroom Home Multi-Family Unit	3 Bedroom Home Mobile Home	4+ Bedroom Home Single Family Unit	4+ Bedroom Home Multi-Family Unit	4+ Bedroom Home Mobile Home
Natural Gas M.D.U.	443 ~~481~~	386 ~~337~~	412 ~~409~~	499 ~~546~~	434 ~~382~~	459 ~~464~~
Natural Gas M.P.C.	324 ~~377~~	282 ~~264~~	302 ~~321~~	366 ~~430~~	318 ~~301~~	336 ~~365~~
Fuel Oil	508 ~~772~~	442 ~~541~~	472 ~~657~~	569 ~~866~~	495 ~~606~~	524 ~~736~~
Propane	558 ~~884~~	486 ~~563~~	519 ~~683~~	625 ~~901~~	544 ~~630~~	575 ~~765~~
Electricity	714 ~~670~~	622 ~~469~~	664 ~~569~~	800 ~~750~~	696 ~~525~~	736 ~~630~~
Coal ~~(tons)~~	306 ~~313~~	266 ~~219~~	285 ~~266~~	357 ~~365~~	311 ~~256~~	328 ~~311~~
Wood ~~(cords)~~	332 ~~339~~	288 ~~238~~	308 ~~288~~	387 ~~396~~	336 ~~277~~	356 ~~336~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	272 ~~294~~	236 ~~206~~	253 ~~250~~	333 ~~370~~	290 ~~259~~	310 ~~314~~
Fuel Oil	383 ~~620~~	333 ~~439~~	356 ~~533~~	467 ~~765~~	406 ~~536~~	434 ~~650~~
Propane	633 ~~652~~	551 ~~457~~	589 ~~555~~	773 ~~797~~	673 ~~558~~	719 ~~677~~
Electricity	599 ~~543~~	521 ~~380~~	557 ~~462~~	732 ~~644~~	637 ~~465~~	681 ~~564~~
Coal ~~(tons)~~	238 ~~235~~	207 ~~165~~	221 ~~200~~	297 ~~294~~	258 ~~206~~	276 ~~250~~
Wood ~~(cords)~~	257 ~~255~~	224 ~~178~~	239 ~~217~~	322 ~~319~~	280 ~~223~~	299 ~~271~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	378 ~~425~~	329 ~~297~~	351 ~~361~~	426 ~~484~~	370 ~~339~~	396 ~~411~~
Fuel Oil	531 ~~870~~	462 ~~609~~	494 ~~740~~	595 ~~975~~	518 ~~682~~	553 ~~829~~
Propane	879 ~~906~~	765 ~~634~~	817 ~~770~~	984 ~~1014~~	856 ~~710~~	915 ~~862~~
Electricity	832 ~~755~~	724 ~~528~~	774 ~~641~~	932 ~~845~~	811 ~~592~~	867 ~~710~~
Coal ~~(tons)~~	356 ~~353~~	310 ~~247~~	331 ~~300~~	416 ~~412~~	362 ~~288~~	387 ~~350~~
Wood ~~(cords)~~	386 ~~382~~	336 ~~268~~	359 ~~325~~	450 ~~446~~	392 ~~312~~	419 ~~379~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	272 ~~294~~	236 ~~206~~	253 ~~250~~	333 ~~370~~	290 ~~259~~	310 ~~314~~
Fuel Oil	383 ~~603~~	333 ~~422~~	356 ~~512~~	467 ~~735~~	406 ~~514~~	434 ~~625~~
Propane	607 ~~627~~	528 ~~439~~	565 ~~533~~	742 ~~765~~	645 ~~536~~	690 ~~651~~
Electricity	599 ~~543~~	521 ~~380~~	557 ~~462~~	732 ~~664~~	637 ~~465~~	681 ~~564~~
Coal ~~(tons)~~	238 ~~235~~	207 ~~165~~	221 ~~200~~	297 ~~294~~	258 ~~206~~	276 ~~250~~
Wood ~~(cords)~~	257 ~~255~~	224 ~~178~~	239 ~~217~~	322 ~~319~~	280 ~~223~~	299 ~~271~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	378 ~~425~~	329 ~~297~~	351 ~~361~~	426 ~~484~~	370 ~~339~~	396 ~~411~~
Fuel Oil	531 ~~836~~	462 ~~585~~	494 ~~710~~	595 ~~936~~	518 ~~655~~	553 ~~796~~
Propane	843 ~~870~~	733 ~~609~~	784 ~~739~~	944 ~~974~~	821 ~~682~~	878 ~~828~~
Electricity	832 ~~755~~	724 ~~528~~	774 ~~641~~	932 ~~845~~	811 ~~592~~	867 ~~710~~
Coal ~~(tons)~~	356 ~~353~~	310 ~~247~~	331 ~~300~~	416 ~~412~~	362 ~~288~~	387 ~~350~~
Wood ~~(cords)~~	386 ~~382~~	336 ~~268~~	359 ~~325~~	450 ~~446~~	392 ~~312~~	419 ~~379~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Type Fuel	1 Bedroom Home: Single Family Unit	1 Bedroom Home: Multi-Family Unit	1 Bedroom Home: Mobile Home	2 Bedroom Home: Single Family Unit	2 Bedroom Home: Multi-Family Unit	2 Bedroom Home: Mobile Home
Natural Gas	212 ~~309~~	184 ~~216~~	197 ~~263~~	353 ~~309~~	308 ~~272~~	329 ~~331~~
Fuel Oil	466 ~~620~~	405 ~~434~~	433 ~~527~~	568 ~~756~~	494 ~~529~~	528 ~~643~~
Propane	625 ~~668~~	544 ~~467~~	582 ~~568~~	764 ~~816~~	665 ~~571~~	711 ~~693~~
Electricity M.P.C.	635 ~~571~~	553 ~~400~~	591 ~~485~~	777 ~~698~~	676 ~~489~~	722 ~~593~~
Electricity P.P.L.	671 ~~658~~	584 ~~461~~	624 ~~559~~	820 ~~804~~	713 ~~563~~	763 ~~684~~
Coal ~~(tons)~~	252 ~~247~~	219 ~~173~~	234 ~~210~~	252 ~~309~~	219 ~~216~~	234 ~~263~~
Wood ~~(cords)~~	273 ~~268~~	238 ~~187~~	254 ~~228~~	341 ~~335~~	297 ~~234~~	317 ~~285~~

Type Fuel	3 Bedroom Home: Single Family Unit	3 Bedroom Home: Multi-Family Unit	3 Bedroom Home: Mobile Home	4+ Bedroom Home: Single Family Unit	4+ Bedroom Home: Multi-Family Unit	4+ Bedroom Home: Mobile Home
Natural Gas	401 ~~446~~	349 ~~313~~	373 ~~380~~	452 ~~509~~	393 ~~356~~	420 ~~432~~
Fuel Oil	646 ~~860~~	562 ~~602~~	601 ~~731~~	724 ~~964~~	630 ~~675~~	673 ~~819~~
Propane	868 ~~927~~	755 ~~649~~	807 ~~788~~	972 ~~1038~~	846 ~~727~~	904 ~~882~~
Electricity M.P.C.	883 ~~793~~	768 ~~555~~	821 ~~674~~	988 ~~888~~	860 ~~622~~	919 ~~755~~
Electricity P.P.L.	932 ~~914~~	811 ~~640~~	867 ~~777~~	1044 ~~1024~~	908 ~~717~~	971 ~~870~~
Coal ~~(tons)~~	378 ~~371~~	329 ~~260~~	352 ~~315~~	441 ~~433~~	384 ~~303~~	410 ~~368~~
Wood ~~(cords)~~	410 ~~402~~	356 ~~281~~	381 ~~341~~	478 ~~469~~	416 ~~328~~	444 ~~398~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	274 ~~285~~	239 ~~200~~	255 ~~242~~	337 ~~359~~	293 ~~251~~	313 ~~305~~
Fuel Oil	463 ~~614~~	403 ~~430~~	430 ~~522~~	564 ~~749~~	491 ~~524~~	525 ~~637~~
Propane	648 ~~549~~	564 ~~384~~	603 ~~467~~	792 ~~671~~	689 ~~470~~	736 ~~570~~
Electricity	605 ~~527~~	527 ~~369~~	563 ~~448~~	740 ~~644~~	643 ~~451~~	688 ~~547~~
Coal ~~(tons)~~	200 ~~190~~	174 ~~133~~	186 ~~162~~	250 ~~238~~	218 ~~166~~	233 ~~202~~
Wood ~~(cords)~~	260 ~~247~~	226 ~~173~~	242 ~~210~~	325 ~~309~~	283 ~~216~~	302 ~~262~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	382 ~~412~~	332 ~~288~~	355 ~~350~~	430 ~~469~~	374 ~~328~~	400 ~~399~~
Fuel Oil	642 ~~852~~	558 ~~596~~	597 ~~724~~	719 ~~954~~	626 ~~668~~	669 ~~811~~
Propane	900 ~~762~~	783 ~~534~~	837 ~~648~~	1008 ~~854~~	877 ~~598~~	937 ~~726~~
Electricity	841 ~~732~~	731 ~~512~~	782 ~~622~~	941 ~~819~~	819 ~~574~~	875 ~~696~~
Coal ~~(tons)~~	300 ~~285~~	261 ~~200~~	279 ~~242~~	350 ~~333~~	305 ~~233~~	326 ~~283~~
Wood ~~(cords)~~	390 ~~371~~	339 ~~259~~	363 ~~315~~	455 ~~432~~	396 ~~303~~	423 ~~367~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

Powell, Granite, Deer Lodge, Silver Bow,
Beaverhead and Madison Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	318 ~~340~~	277 ~~244~~	296	390 ~~430~~	340 ~~307~~	363 ~~372~~
Fuel Oil	478 ~~750~~	416 ~~525~~	445 ~~638~~	583 ~~915~~	507 ~~640~~	542 ~~777~~
Propane	661 ~~772~~	575 ~~541~~	614 ~~656~~	807 ~~943~~	702 ~~660~~	750 ~~802~~
Electricity	702 ~~643~~	611 ~~450~~	653 ~~547~~	858 ~~786~~	746 ~~550~~	798 ~~668~~
Coal ~~(tons)~~	278	242 ~~195~~	259 ~~237~~	348	303 ~~244~~	324 ~~296~~
Wood ~~(cords)~~	302	262 ~~211~~	280 ~~256~~	377	328 ~~264~~	351 ~~320~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	443 ~~503~~	385 ~~352~~	412 ~~427~~	499 ~~573~~	434 ~~401~~	464 ~~487~~
Fuel Oil	663 ~~1040~~	577 ~~728~~	616 ~~884~~	743 ~~1165~~	646 ~~816~~	691 ~~991~~
Propane	917 ~~1072~~	798 ~~750~~	853 ~~911~~	1027 ~~1201~~	893 ~~841~~	955 ~~1021~~
Electricity	975 ~~893~~	848 ~~625~~	907 ~~759~~	1092 ~~1000~~	950 ~~700~~	1016 ~~850~~
Coal ~~(tons)~~	418	363 ~~292~~	388 ~~355~~	487	424 ~~341~~	453 ~~414~~
Wood ~~(cords)~~	452	394 ~~317~~	421 ~~385~~	528	459 ~~369~~	491 ~~449~~

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

46.13.402 DETERMINING BENEFIT AWARD (1) For applications filed during the period October 1 through April 30, households found eligible will receive the applicable benefit amount, if available, determined from the matrix table found in ARM 46.13.401 which corresponds to the household's type and cost of primary heating fuel, the number of bedrooms in, and type of, dwelling unit, the relative climatic condition by heating district and the level of household income~~,~~. ~~if available.~~

Subsections (1)(a) through (3) remain the same.

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

4. These rule changes are, in part, proposed in response to the findings of an extensive study conducted by the Montana Low Income Coalition with the cooperation of the department. The rule changes provide for supplemental benefits to assist those households with incomes less than 50% of the Office of Management and Budget (OMB) poverty guidelines and that have also paid more than 5% of their household income toward their home energy costs. Additionally, the proposal will raise benefits provided for multi-family and mobile home housing types.

Changes are proposed in applicable dates, poverty guidelines and the benefit matrices. These changes bring the program into conformity with federal requirements and current energy pricing.

5. 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 September 11, 1986.

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

Dave Lewis

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 4, 1986.

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

In the matter of the amendment of Rules 46.10.324 and 46.12.3401 pertaining to AFDC eligibility of minor custodial parents and AFDC-related Medicaid eligibility	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.10.324 AND 46.12.3401 PERTAINING TO AFDC ELIGIBILITY OF MINOR CUSTODIAL PARENTS AND AFDC-RELATED MEDICAID ELIGIBILITY

TO: All Interested Persons

1. On September 10, 1986, 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 proposed amendment of Rules 46.10.324 and 46.12.3401 pertaining to AFDC eligibility of minor custodial parents and AFDC-related Medicaid eligibility.

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

46.10.324 ~~CARETAKER-RELATIVE--LIVING-IN--HOME-OF-PARENT~~ MINOR CUSTODIAL PARENTS

(1) A ~~caretaker-relative~~ minor custodial parent who is living in the home of ~~a~~ his or her parent (herein referred to as grandparent) is eligible for AFDC when the ~~parent~~ grandparent is receiving AFDC in the ~~caretaker-relative's~~ minor's behalf or when the ~~caretaker-relative~~ minor can show that the ~~parent~~ grandparent is unable to provide support equivalent to AFDC. A minor parent living in the home of the grandparent is ineligible for AFDC when the grandparent can provide support equivalent to AFDC.

(a) If the grandparent is receiving AFDC on behalf of the minor parent, the minor parent's child(ren) is added to the assistance unit.

(ab) In determining whether the ~~caretaker-relative's parents-are~~ grandparent is able to provide equivalent support, ~~the--free--shelter--supplied--by--the--parents--of--the--caretaker relative--will--be--considered--available--to--the--caretaker relative--after--the--following--disregards:~~ the grandparent's income shall be counted as unearned income to the minor parent and child(ren) in the following manner:

(i) ~~$75-from-earned-income-of-the-parents;~~ exclude the first $75 of each grandparent's gross earned income if employed 120 hours per month or more, $40 if employed 20 to 119 hours per month and $10 if employed less than 20 hours per month;

(ii) ~~child-care--expenses-of-the--parents-not--to-exceed~~

~~$160--per--month-per--child,~~ add unearned income of the grandparent;

(iii) ~~the-AFDC-net-monthly-income-standard-as-provided-in ARM-46.10.403-for-a-family-consisting-of-the-caretaker-relative's-parents-and-any-minors-other-than-the-caretaker-relative,~~ subtract the net monthly income standard as provided in ARM 46.10.403 for the grandparent and any dependents of the grandparents living in the home, excluding the minor parent and his or her child(ren).

(iv) subtract the amount paid by the grandparents to support individuals not living in the home who could be considered as dependents; and

(v) subtract child support or alimony paid to individuals outside the home.

~~(b)--If-the-caretaker-relative's-parent-is-receiving-AFDC in-behalf-of-the-caretaker-relative,-the-caretaker-relative's children-are-added-to-the-assistance-unit.~~

(2) A ~~caretaker-relative~~ minor custodial parent who is not living in the home of ~~a-parent~~ his or her parent is treated as a separate household. Parental income is counted only when actually contributed.

(3) A child of the minor parent who is not eligible for an AFDC grant is eligible for medicaid as provided in ARM 46.12.3401.

AUTH: Sec. 53-4-212 MCA; Sec. 3, Ch. 53, L. 1985, Eff. 3/11/85

IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

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

(c) needy caretaker relatives as defined in ARM 46.10.302 who have in their care an individual under age 19 who is eligible for medicaid under subsection (b);

(d) a child of a minor custodial parent when the custodial parent is living in the home of his or her parent (the child's grandparent), and the grandparent's income is the sole reason rendering the child ineligible for AFDC;

(~~d~~e) individuals who would be eligible for AFDC except for failure to meet the child support requirements found in ARM 46.10.314 or the WIN participation requirements found in ARM 46.10.308;

(~~e~~f) individuals who, in August 1972, were eligible for OASDI and who were also receiving AFDC or would have been receiving AFDC had they applied, providing:

Subsections (2)(e)(i) through (iii) remain the same in text but will be recategorized as (2)(f)(i) through (iii).

(~~f~~3) ~~i~~Individuals whose AFDC is terminated solely because of increased income from employment~~,~~, increased hours of employment or as a result (in whole or in part) of the start of or an increase in the amount of child or spousal support payments will continue to receive medicaid for four (4) months, providing:

(a) the household received an AFDC grant in at least three (3) of the six (6) months prior to the month the household became ineligible; and

(b) if the grant terminates because of increased hours of employment or increased income from employment, a member of the household continues to work during the extension.

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

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

~~(B)--Any-private-insurance-coverage-is-disclosed;~~

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

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

(i~~i~~) this ~~nine~~ four (4) month period of continued medicaid coverage begins~~:~~

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

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

(4) Individuals whose AFDC is terminated because of loss of $30 and one-third (1/3) disregard at the end of four (4) months or $30 disregard at the end of eight (8) months will continue to receive medicaid for nine (9) months, providing any private insurance coverage is disclosed;

Subsections (3) through (4) remain the same in text but will be renumbered as (5) through (6).

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 3, Ch. 53, L. 1985, Eff. 3/11/85
IMP: Sec. 53-6-131 and 53-4-231 MCA

3. The language in ARM 46.10.324 is being changed to clearly reflect that it applies only to minor custodial parents. The treatment of grandparent income to determine AFDC eligibility of a minor custodial parent and child is also being changed to conform with federal regulations at 45 CFR Section 233.20(a)(3)(xiv) and (a)(3)(xviii). Finally, the proposed rule clarifies that a grandchild who is denied AFDC solely because of the counting of the grandparent's income is eligible for Medicaid as provided in the federal rule at 42 CFR Section 435.113.

ARM 46.12.3401 is being amended to reflect that Medicaid coverage is available to a child who is ineligible for AFDC solely because of the counting of grandparent income. 42 CFR 435.113 mandates that the state rules provide that individuals who would be eligible for AFDC but for their failure to assign child support payments to the state will also be eligible for Medicaid. The rule is also being revised to define and clarify Medicaid eligibility under the four month and nine month medical extensions in 42 CFR 435.112.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 11, 1986.

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

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 4, 1986.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules concerning special education transportation	)))))	NOTICE OF ADOPTION OF 10.16.2501 through 10.16.2503 CONCERNING SPECIAL EDUCATION TRANSPORTATION

TO: All Interested Persons:

1. On June 12, 1986 the Superintendent of Public Instruction published a notice of public hearing to consider adoption of the above-stated rules at page 1003, 1986 Montana Administrative Register, issue number 11. The hearing was held on July 11, 1986 at 10:00 a.m. in the conference room of Room 106 at the State Capitol, Helena, Montana.

2. The superintendent has adopted the rules exactly as proposed.

3. No comments or testimony were received.

Ed Argenbright
Superintendent of Public Instruction

Certified to the Secretary of State, August 4, 1986.

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

IN THE MATTER OF THE AMENDMENT OF 36.22.1242, A NEW SUBSECTION (3) WILL BE ADDED TO INCREASE THE PRIVILEGE AND LICENSE TAX ON THE PRODUCTION OF OIL AND NATURAL GAS WITHIN THE STATE OF MONTANA.)	NOTICE OF AMENDMENT OF RULE 36.22.1242 INCREASING THE OIL AND GAS PRIVILEGE AND LICENSE TAX.

TO: All Interested Persons:

1. On July 24, 1986 at 9:00 a.m. at the Billings Petroleum Club, Sheraton Hotel, Billings, Montana, the Board of Oil and Gas Conservation conducted a hearing concerning the above stated amendment of rule 36.22.1242 published at page 1063 MAR issue number 12.

2. The Board has amended the rule exactly as proposed.

3. The Board received written comments from Janelle K. Fallan, Executive Director of the Montana Petroleum Association; Jerome Anderson, Attorney for Shell Western Exploration and Production Company; Dr. J. H. N. Wennekers, President, Kassa Oil and Gas Inc.; Representative Bob Gilbert of House District No. 22, Sidney, Montana; Craig Ambler, Division Land Manager for Cox Oil and Gas, Inc.; C. Ed Hall, Director-Public Affairs, Santa Fe Energy Company; Michael D. Hebert, President, Montana Petroleum Association; Brian J. Wright, Vice President, for Western Operations of Eastern American Energy Corporation and Elaine Barrett of Baker, Montana.

At the hearing on this matter, the Board also heard testimony from Carl Jansky, independent oilman from Ferdig, Montana; Jannelle K. Fallan, Executive Director of the Montana Petroleum Association; Jerome Anderson, Attorney for Shell Western Exploration and Production Company; Senator Tom Keating of Billings, Montana; Senator Larry Tveit of Fairview, Montana; and Raymond K. Peete, Attorney from Billings, Montana.

Generally the adverse comments, both written and oral, indicated that the Board should further reduce its own expenditures and staff before increasing the privilege and license tax. The Board's response to those comments is that it has proposed a significant reduction in its fiscal year 1987 budget for operating expenditures, discharged two field inspectors, placed another field inspector on part-time, and will continue to investigate the possibility of curtailing expenditures further. Although the greatly reduced drilling activity in Montana does reduce workload demands in some areas much of the workload for the Board's staff is not reduced. Presently producing wells still must be monitored, records compiled, hearings conducted, newly plugged wells inspected and complaints investigated.

While the rate of the privilege and license tax is increased, the actual amount of tax, approximately two cents a barrel, is the same as was paid on 1985 oil.

Both opposing and supporting commentors said that the Board provides many valuable services to the industry that should not be discontinued and that the Board's record on decreasing the tax rate as crude oil prices were rising was commendable.

The attorney for Shell Western Exploration and Production Company suggested that the Board seek legislation changing the privilege and license tax from a percentage of market price to a flat tax per barrel or mcf. Mr. Anderson suggested a flat tax of perhaps 2½ cents per barrel, stating that industry needed predictability in taxing.

Originally, the privilege and license tax was a flat tax. The legislature amended it to give the Board authority to impose a tax of up to 2/10ths of 1% of the market price of oil and gas. This flexibility allowed the Board to continually adjust and in fact decrease the rate of tax during the period when petroleum prices were escalating. If the Board had not had that freedom, it would have amassed an unnecessarily large surplus during the period of high prices. Viewed from todays perspective, amassing a surplus may appear to have been the thing to do. Instead, this Board eroded its surplus deliberately by charging a rate of tax which was insufficient of itself to finance the Board's operations. However, had the Board amassed the surplus it could have achieved by keeping the tax at maximum rates during the "high price era", the surplus would be approximately $6,000,000. The Board does not believe such a course of action would have been in the best interests of the State's oil and gas industry.

4. The authority for the rule is Sections 82-11-111 and 82-11-131, MCA and the rule implements Section 82-11-131, MCA.

BOARD OF OIL AND GAS CONSERVATION
RICHARD A. CAMPBELL, CHAIRMAN

BY: Dee Rickman
DEE RICKMAN
ASSISTANT ADMINISTRATOR
OIL AND GAS CONSERVATION DIVISION

Certified to the Secretary of State August 4, 1986.

VOLUME NO. 41 OPINION NO. 76

ADOPTION - Effect of Indian Child Welfare Act on obligation to provide child protection services and financial assistance;
CHILD CUSTODY AND SUPPORT - Effect of Indian Child Welfare Act on obligation to provide child protection services and financial assistance;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Effect of Indian Child Welfare Act on obligation to provide child protection services and financial assistance; licensing of foster care homes on Indian reservations;
INDIANS - Effect of Indian Child Welfare Act on obligation to provide child protection services and financial assistance; licensing of foster care homes on Indian reservations;
LICENSES - Foster care homes on Indian reservations;
ADMINISTRATIVE RULES OF MONTANA - Sections 46.5.603 to 46.5.607;
MONTANA CODE ANNOTATED - Sections 18-11-101 to 18-11-111, 41-3-301, 41-3-401 to 41-3-406;
UNITED STATES CODE - 25 U.S.C. §§ 1901 to 1963; 42 U.S.C. §§ 601 to 676.

HELD: 1. The Montana Department of Social and Rehabilitation Services does not have jurisdiction to provide child protection services to Indian children subject to exclusive tribal jurisdiction under the Indian Child Welfare Act or residing on the reservation and eligible for tribal membership.

2. The Montana Department of Social and Rehabilitation Services may not make payments under Title IV-E of the Social Security Act to Indian children whose foster care or adoption placement is subject to exclusive tribal jurisdiction under the Indian Child Welfare Act.

3. The Montana Department of Social and Rehabilitation Services may not provide child protection services and benefits funded solely by state and local monies to Indian children whose foster care or adoption placement is subject to exclusive tribal jurisdiction under the Indian Child Welfare Act or who are

eligible for comparable assistance under Bureau of Indian Affairs programs.

4. The Montana Department of Social and Rehabilitation Services may not continue to provide child protection services or benefits to an Indian child whose child custody proceeding has been transferred from state district court to tribal jurisdiction under the Indian Child Welfare Act.

5. The Montana Department of Social and Rehabilitation Services has the authority to license foster care homes maintained by nontribal members on Indian reservations. The Department has the authority to license foster care homes operated by tribal members on a reservation only if the tribe does not engage in such licensing activity.

30 July 1986

David Lewis, Director
Department of Social and
  Rehabilitation Services
Room 301, SRS Building
111 Sanders
Helena MT 59620

Dear Mr. Lewis:

You have requested my opinion concerning the responsibilities of the Montana Department of Social and Rehabilitation Services (Department) with respect to (1) the provision of child protection services and certain benefits to Indian children and (2) the licensing of foster care homes located on Indian reservations. Your specific questions are:

1. Does the Department have jurisdiction to provide child protection services to an Indian child residing or domiciled on his tribe's reservation?

2. What are the Department's responsibilities with respect to the provision of services and benefits under Title IV-E of the Social Security Act, 42 U.S.C. §§ 671 to 675, to an Indian child residing or domiciled on his tribe's reservation?

3. Does the Department have a responsibility to provide child protection services, which are funded solely by state and local monies, to an Indian child residing on a reservation and eligible for assistance under Bureau of Indian Affairs programs?

4. Does the Department have a responsibility to continue provision of child protection services to an Indian child residing and domiciled off his tribe's reservation after a child custody proceeding has been transferred pursuant to section 101(b) of the Indian Child Welfare Act, 25 U.S.C. § 1911(b), to that tribe?

5. Does the Department have jurisdiction to license member-maintained and nonmember-maintained foster care homes located on an Indian reservation?

These questions raise largely unresolved issues requiring analysis of relevant federal and state statutes, regulations, and decisional authority.

I.

The Department's child protection service responsibilities are varied but, for present purposes, can be separated into those which involve temporary or permanent separation of a child from his parents' custody and those which attempt to further the child's best interests without such separation. Representative of the first category are abuse, neglect, or dependency proceedings which seek termination of the parents' custodial rights; the second category involves services such as day care and homemaker assistance which do not effect removal of the child from parental custody. This distinction is significant because, as developed below, the Indian Child Welfare Act, 25 U.S.C. §§ 1901 to 1963

(1983) (ICWA), applies only to "child custody proceedings" which are defined in section 4(1), 25 U.S.C. § 1903(1), with reference to four kinds of individually described actions: (1) "foster care placement" which means temporary placement in a foster care home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand but where parental rights have not been terminated; (2) "termination of parental rights" which means any action resulting in termination of the parent-child relationship; (3) "preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after termination of parental rights prior to or in lieu of adoption placement; and (4) "adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. The common element among these four sub-terms is voluntary or involuntary separation of an Indian child from the custody of his parents or Indian custodian. Consequently, while certain of the Department's child protection service responsibilities will be directly affected by the ICWA, others will not. With respect to the second category of child protective services, different analytical principles must be applied to determine the Department's authority.

A.

The ICWA was enacted in response to widespread concern over the high incidence of removal by, _inter alia_, state agencies of Indian children from their parents' or Indian custodians' custody and placement into non-Indian environments. _See_ 25 U.S.C. § 1901(4). Its general purpose, as stated in section 3, 25 U.S.C. § 1902, is "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards" governing such removal and placement. _See also_ H.R. Rep. No. 1386, 95th Cong., 2d Sess. 8 (1978); _see generally_ _In re M. E. M._, 195 Mont. 329, 333, 635 P.2d 1313, 1316 (1981). With respect to these proceedings, Title I of the ICWA establishes two jurisdictional standards: (1) Indian tribes, as opposed to the state, have exclusive jurisdiction over any child custody proceeding (a) involving an Indian child who resides or is domiciled within that tribe's reservation unless jurisdiction is vested in the state by existing federal law or (b) any Indian child who is a ward of a tribal court irrespective of his residence or domicile; and (2) a state court is required in any proceeding for the foster care placement or termination of parental rights of an Indian child not domiciled or residing within the reservation of that child's tribe to transfer the proceeding to the tribe's jurisdiction, absent good cause to the contrary or objection by either parent, upon a parent's, an Indian custodian's or the tribe's petition, subject to declination of the transfer by the tribe's court. 25 U.S.C. § 1911(a) and (b). Indian children who are tribal court wards are not at issue in this opinion. Before discussion of other substantive aspects of Title I, the scope of exclusive tribal jurisdiction over an Indian child, not already a tribal court ward, under section 101(a), 25 U.S.C. § 1911(a), must be clarified because it is a predicate for much of the analysis below.

I recognize that a literal construction of section 101(a) may indicate that a tribe has exclusive jurisdiction over any Indian child residing or domiciled within its reservation. I further realize that the ICWA is designed to restrict state, and not tribal, jurisdiction in child custody proceedings. Nonetheless, section 101(a) must be read _in pari materia_ with section 101(b), 25 U.S.C. § 1911(b), which permits the exercise of state court jurisdiction over an Indian child "not domiciled or residing within the reservation of the Indian child's tribe." When such a child is residing on a reservation of a tribe other than his own, precise application of section 101(b) invests the state court with jurisdiction, subject to its notice and transfer provisions. This interpretation of section 101(b), which directly militates against construing section 101(a) as granting a tribe exclusive jurisdiction over nonmember Indian children within its reservation, comports with clear legislative intent that the child's tribe be given the opportunity to assume jurisdiction in custody proceedings. It also comports with recent decisional authority suggesting that a tribe's inherent sovereignty powers do not encompass broader regulation of nonmember Indians than non-Indians. _Montana v. United States_, 450 U.S. 544, 564 (1980) ("in addition to the power to punish tribal offenders, the Indian tribes retain their inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members"); Washington v. Confederated Tribes, 447 U.S. 134, 161 (1980) (because "nonmembers are not constituents of the governing tribe[,] ... [f]or most practical purposes those Indians stand on the same footing as non-Indians resident on the reservation"); see also New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983). The ICWA's legislative history, moreover, reflected no expansion of the sovereignty rights of one tribe as against members of different tribes but, instead, indicated only that the statute's jurisdictional standards paralleled extant case law; those decisions, in turn, recognized exclusive tribal jurisdiction in child custody matters involving the tribe's children domiciled on the reservation. H.R. Rep. No. 1386 at 21. While the issue is close, the most sensitive reading of sections 101(a) and 101(b) supports the conclusion that the former provision grants a tribe exclusive jurisdiction only over children residing or domiciled on the reservation who are members of or eligible for membership in that tribe or, if members are eligible for membership in another tribe, have the more significant contacts with the tribe asserting such jurisdiction. See 25 U.S.C. § 1903(5). I must emphasize, however, that the ICWA does not specifically address the question of one tribe's jurisdiction over another tribe's child and that the mere existence of possible state court jurisdiction under section 101(b) does not, in itself, preclude a tribe's exercise of jurisdiction over an Indian child not eligible for membership in the tribe.

Title I additionally establishes substantive and procedural standards for voluntary consent to foster care placement or termination of parental rights as to Indian children in state court proceedings and for preferential adoption placement of such children into Indian families. 25 U.S.C. §§ 1913, 1915. State court jurisdiction over the emergency removal or placement of an Indian child residing or domiciled on his tribe's reservation is limited to those who are temporarily located off the reservation; i.e., a state court has no such jurisdiction over such a child when he is within the reservation. 25 U.S.C. § 1922. See 124 Cong. Rec. 38,107 (Oct. 14, 1978) (statement of Rep. Udall).

Viewed as a whole, Title I clearly circumscribes state court authority to act in child custody proceedings.

Exclusive tribal jurisdiction attaches to those proceedings when the child resides or is domiciled on his tribe's reservation, while state court jurisdiction, subject to a parent's, an Indian custodian's, or the tribe's right to request transfer, exists only if the child both resides and is domiciled off the reservation. These provisions reflect an intent by Congress to commit to tribal resolution the removal of an Indian child from his parents' custody and placement into an environment calculated to further his best interests. It is important, however, to reiterate that the ICWA's recognition of tribal primacy in such matters was preceded by court decisions establishing the exclusivity of tribal jurisdiction in domestic relations matters involving Indian children domiciled on their tribes' reservations. See, e.g., Fisher v. District Court, 424 U.S. 382 (1976) (per curiam) (reversing state court determination that it had jurisdiction over adoption proceeding in which all parties were tribal members domiciled on Northern Cheyenne Reservation); Wisconsin Potowatomies v. Houston, 393 F. Supp. 719 (D. Mich. 1973) (tribe, rather than state probate court, had authority to control custody and placement of Indian children domiciled on reservation when probate court assumed jurisdiction); Wakefield v. Little Light, 276 Md. 333, 347 A.2d 228 (1975) (state court did not have jurisdiction over custody proceeding where Indian child domiciled on Crow Reservation). Thus, even without reference to the ICWA, compelling tribal sovereignty interests exist with respect to Indian children, residing or domiciled within the reservation, who are members or eligible for membership because of their parentage.

Montana statutes establishing the Department's child protection service responsibilities provide a detailed procedure for effecting temporary or permanent termination of parental or Indian custodian custody. Under section 41-3-301(1), MCA, a departmental social worker may remove to a protective facility any youth who is believed to be "in immediate or apparent danger of harm." A petition for temporary investigative authority or protective services must thereafter be filed within 48 hours "unless arrangements acceptable to the [Department] for the care of the child have been made by the parents." § 41-3-301(3), MCA. Such proceeding is initiated in state district court and is prosecuted by the county attorney, the attorney general, or a specially-retained attorney. § 41-3-402, MCA. The Department may alternatively initiate an abuse, neglect, or dependency action and request temporary custody or termination of, inter alia, the parent-child legal relationship. § 41-3-401(10), MCA. The latter proceeding may also be commenced by the Department even though emergency protective services have not been provided. In either proceeding the district court is vested with broad powers to determine both the youth's need for protective services or his abused, neglected, or dependent status and to fashion relief consonant with his best interests. §§ 41-3-403, 41-3-406, MCA. These aspects of the Department's child protection service responsibilities are, therefore, integrated into a detailed and comprehensive adjudicatory scheme in which state district courts have jurisdiction. The Department's authority to interfere with parental custody is unquestionably restricted by that same scheme. See State ex rel. State Tax Appeal Board v. Board of Personnel Appeals, 181 Mont. 366, 371, 593 P.2d 747, 750 (1979) ("administrative agencies are bound by the terms of the statutes or regulations bringing them their powers and are required to act accordingly"); City of Polson v. Public Service Commission, 155 Mont. 464, 469, 473 P.2d 508, 511 (1970) ("[i]t is a basic rule of law that the Commission, as an administrative agency, has only those powers specifically conferred upon it by the legislature").

Natural application of the ICWA and Montana statutes controlling the Department's authority to seek temporary or permanent termination of parental or Indian custodian custody accordingly dictates a conclusion that the Department may not provide such child protection services to Indian children if exclusive tribal jurisdiction exists. Consequently, when a child resides or is domiciled on his tribe's reservation, the Department may not act. In that regard, I note that the term "child custody proceeding" refers not only to judicial proceedings but also to purely administrative actions such as, for example, temporary or emergency removal of an Indian child from his parents' or Indian custodian's custody. This construction of such term is required by its definition in section 4(1) of the ICWA, 25 U.S.C. § 1903(1), and by legislative history establishing that, as initially proposed, the statute used the term "child placement" which was, in part, defined as "any proceedings, judicial, quasi-judicial, or administrative" in nature. See 123 Cong. Rec. 9995 (Apr. 1, 1977) (original text of S. 1214, 95th Cong., 1st Sess. § 4(g) (1977)); S. Rep. No. 597, 95th Cong., 1st Sess. 2 (1977) (reporting out S. 1214 which was introduced as H. R. 12533, 95th Cong., 2d Sess. (1978)); H.R. Rep. No. 1386 at 19. Although amendments to H.R. 12533, which eventually served as the basis for the ICWA, changed the term "child placement" to "child custody proceeding," the purpose of the modification was to eliminate perceived ambiguity in the former term "with respect to the various provisions of the bill" but, quite obviously, not to limit its scope to purely judicial proceedings. H.R. Rep. No. 1386 at 19-20; see 124 Cong. Rec. 38,102 (Oct. 14, 1978) (statement of Rep. Udall). Any other result creates a significant void in the ICWA's coverage inimical to its very purpose. Moreover, were the ICWA inapplicable to purely administrative actions or proceedings by states, section 122, dealing with emergency removals or placements, would have been drafted far differently. That section is clearly intended as a highly restricted exception to exclusive tribal jurisdiction under section 101(a) when an Indian child is temporarily off his tribe's reservation although residing or domiciled thereon. Since, as indicated by section 41-3-301, MCA, such emergency removals may well be necessary before a judicial proceeding can be commenced, the limited exception to section 101(a) would be meaningless if the term "child custody proceeding" did not encompass purely administrative actions.

Lastly, the ICWA does authorize state and tribal agreements "which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes." 25 U.S.C. § 1919(a). The Department is, under the State-Tribal Cooperative Agreements Act, §§ 18-11-101 to 111, MCA, authorized to enter into such agreements. Although none has been reached in Montana, they provide a method for the Department to perform child protection services, which constitute a child custody proceeding under the ICWA, with respect to an Indian child residing or domiciled on his tribe's reservation.

B.

Whether an Indian child residing on his tribe's reservation is within the Department's jurisdiction for the purpose of receiving protective services, which do not constitute a child custody proceeding under the ICWA, is subject to different analytical standards. These standards were summarized in White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142-43 (1980):

> Congress has broad power to regulate tribal affairs under the Indian Commerce Clause. ... This congressional authority and the "semi-independent position" of Indian tribes have given rise to two independent but related barriers to the assertion of state regulatory authority over tribal reservations and members. First, the exercise of such authority may be pre-empted by federal law. ... Second, it may unlawfully infringe "on the right of reservation Indians to make their own laws and be ruled by them." ... The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members. They are related, however, in two important ways. The right of tribal self-government is ultimately dependent on and subject to the broad power of Congress. Even so, traditional notions of Indian self-government are so deeply engrained in our jurisprudence that they have provided an important "backdrop," ... against which vague or ambiguous federal enactments must always be measured. [Citations omitted.]

See Rice v. Rehner, 463 U.S. 712, 718-20 (1983). The Court later observed that, "[w]hen on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest." 448 U.S. at 144.

Because the purpose of child protection services is to further a child's best interests, a child's on-reservation residence and eligibility for tribal membership or actual membership are decisive factors in determining the scope of the Department's regulatory authority. As indicated by the ICWA, its legislative history and antecedent decisions, tribes have a uniquely important sovereignty interest in matters affecting the viability of their members' parent-child relationships. Indeed, the ICWA has been criticized for not expressly restricting state involvement prior to actual removal of a child from parental custody. Barsh, The Indian Child Welfare Act of 1978: A Critical Analysis, 31 Hastings L.J. 1287, 1306 (1980). The ICWA's limited scope in this regard, however, can hardly be construed as implicit congressional approval of state agency jurisdiction when a "child custody proceeding" is not present. Not only would such a conclusion run contrary to the notion that, as to reservation intra-tribal affairs, a tribe is invested with substantial autonomy, but it would also be inconsistent with the ICWA's underlying purpose of protecting on-reservation tribal family structure from often ill-considered state action. See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 168-71 (1982) ("[t]he Court has been careful to protect the tribes from interference with tribal control over their own members"); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 (1978) (refusing to recognize a federal cause of action to protect rights created by Title I of the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 to 1303, because such right might "substantially interfere with a tribe's ability to maintain itself as a culturally and politically distinct entity"). Moreover, "[r]epeal by implication of an established tradition of immunity or self-governance is disfavored." Rice v. Rehner, 463 U.S. at 720.

The Department's authority to provide child protection services not constituting a child custody proceeding under the ICWA, therefore, does not extend to an Indian child residing on his tribe's reservation. The affected tribe, instead, has exclusive jurisdiction over and responsibility for the child. However, the State-Tribal Cooperative Agreements Act does authorize the Department to enter into agreements with tribes concerning the provision of such services. It must be underscored that, absent an agreement to the contrary, the Department cannot be required by tribal court order to provide services since those courts have no inherent jurisdiction over it.

II.

Title IV of the Social Security Act, 42 U.S.C. §§ 601 to 676 (1983), authorizes grants to states for aid to needy families with children and for child-welfare services. Part E to Title IV was enacted by Pub. L. No. 96-272, 94 Stat. 501 (1980), and extends federal financial assistance to states with approved plans for foster care and adoption assistance, foster care maintenance payments, and adoption assistance programs. 42 U.S.C. §§ 671 to 673. Montana formulated a state plan which, in turn, has been approved by the Health and Human Services Department. The plan makes no reference to the several Indian reservations in this state, nor does it specifically discuss the provision of Title IV-E funds to Indian children. Title IV-E and its associated federal administrative regulations are similarly silent.

42 U.S.C. § 672(a) permits states with approved plans to make foster care maintenance payments if certain conditions are met. Paragraph 2 of those conditions requires that the involved child's "placement and care [be] the responsibility of (A) the State agency administering the State plan approved under section 671 of this Title, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 671 of the this Title has made an agreement which is still in effect." As developed above, however, foster care placements are, with respect to an Indian child residing or domiciled on his tribe's reservation, matters outside the Department's statutory responsibility and vested within the affected tribe's exclusive jurisdiction. Since there can be no reasoned argument that the 1980 amendments establishing Title IV-E extend such authority to the states, I must conclude that, by operation of the ICWA, the Department is not responsible for making foster care maintenance payments on behalf of such a child. The Department, moreover, is not required by Title IV-E to enter into agreements with tribally-controlled agencies which may have responsibility for an Indian child's placement or care. <u>Native Village of Stevens</u> v. <u>Smith</u>, 770 F.2d 1486, 1488-89 (9th Cir. 1985), <u>cert. denied</u>, 106 S. Ct. 1640 (1986).

The adoption assistance program in 42 U.S.C. § 673 does not contain a provision comparable to 42 U.S.C.

§ 672(a)(2). Nonetheless, it does necessitate substantial state involvement in various adoption-related decisions, some of which rest exclusively with an Indian child's tribe under the ICWA if he resides or is domiciled on its reservation. The state agency must thus decide whether the involved child is one with "special needs." That designation requires the agency to determine that (1) "the child cannot or should not be returned to the home of his parents"; (2) "there exists with respect to the child a specific factor or condition ... because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance"; and (3) "a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance." 42 U.S.C. § 673(c). A state's ability to make these often difficult determinations clearly rests upon a high degree of administrative involvement in child custody proceedings and an independent evaluation of the results of such proceedings. Such involvement and evaluation are directly contrary to the exclusivity of tribal jurisdiction under section 101(a) of the ICWA, 25 U.S.C. § 1911(a).

Finally, the Department cannot be required by tribal court order to make foster care maintenance or adoption assistance payments. As stated above with respect to provision of child protection services, tribal courts have no inherent jurisdiction over the Department, and thus any responsibility to make such payments for an Indian child residing on his tribe's reservation arises only after appropriate agreements under section 104 of the ICWA, 25 U.S.C. § 1919, and 42 U.S.C. § 672(a)(2) have been concluded.

III.

The response to your third question is partially controlled by the analysis above in connection with the first. The Department does not have authority to provide child protection services, which constitute a child custody proceeding under the ICWA, to an Indian child residing or domiciled on his tribe's reservation. It further does not have authority to provide such services, which do not constitute a child custody proceeding under the ICWA, to an Indian child who resides on his tribe's reservation. The scope of such responsibility is unaffected by the child's eligibility, or lack thereof, for participation in Bureau of Indian Affairs programs. Furthermore, in those instances where an Indian child is not subject to exclusive tribal jurisdiction but is eligible for Bureau of Indian Affairs programs, the Department is not obligated to provide child protective services and benefits to the extent the federal program offers comparable assistance. See McNabb v. Heckler, 628 F. Supp. 544 (D. Mont. 1986).

IV.

Once a proceeding has been transferred to tribal jurisdiction under section 101(b) of the ICWA, 25 U.S.C. § 1911(b), such jurisdiction is exclusive and forecloses provision of child protection services by the Department for those reasons discussed under Part I.A above. Because tribal courts have the discretion under section 101(b) to decline jurisdiction over a proposed transfer, the district court's notice of transfer should include a stated period of time within which declination should be affirmatively indicated. The Department of the Interior recommends that the period be established at not less than 20 days. Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,592 (1979). During such period the Department should continue to provide child protection services unless, prior to its expiration, the tribal court acts to assume jurisdiction.

V.

The Department has promulgated regulations governing the licensure of youth foster homes to which Part IV-E referrals and payments are made. §§ 46.5.603 to 46.5.607, ARM. Because the Department may make such referrals and payments to foster homes within a reservation in instances when the tribe does not have exclusive jurisdiction under the ICWA, the question of whether the Department can impose its licensing regulations is not merely a theoretical concern.

First, if the foster home has been tribally licensed, section 201(b) of the ICWA, 25 U.S.C. § 1931(b), requires that, for Part IV-E or other federally-assisted programs, the tribal license "be deemed equivalent to licensing or approval" by the Department. Second, foster care homes of nontribal members, not tribally-licensed, clearly fall within the Department's licensing jurisdiction because, as developed above, the Department will normally have no responsibility for placing into those homes children who are members or eligible for membership in the tribe; consequently, no tribal interest is directly affected. Last, while licensing of foster homes maintained by tribal members will affect the tribe's sovereignty interests since on-reservation regulation of its members is involved, the Department should make licensing available to such members unless tribally-established procedures exist for licensure. If those procedures exist, the Department should request tribal members to secure the requisite license through the tribe and be bound by the eventual tribal determination. If no licensing procedures exist, the Department should process the license request in accordance with its administrative rules.

THEREFORE, IT IS MY OPINION:

1. The Montana Department of Social and Rehabilitation Services does not have jurisdiction to provide child protection services to Indian children subject to exclusive tribal jurisdiction under the Indian Child Welfare Act or residing on the reservation and eligible for tribal membership.

2. The Montana Department of Social and Rehabilitation Services may not make payments under Title IV-E of the Social Security Act to Indian children whose foster care or adoption placement is subject to exclusive tribal jurisdiction under the Indian Child Welfare Act.

3. The Montana Department of Social and Rehabilitation Services may not provide child protection services and benefits funded solely by state and local monies to Indian children whose foster care or adoption placement is subject to exclusive tribal jurisdiction under the Indian Child Welfare Act or who are eligible for comparable assistance under Bureau of Indian Affairs programs.

4. The Montana Department of Social and Rehabilitation Services may not continue to

provide child protection services or benefits to an Indian child whose child custody proceeding has been transferred from state district court to tribal jurisdiction under the Indian Child Welfare Act.

5. The Montana Department of Social and Rehabilitation Services has the authority to license foster care homes maintained by nontribal members on Indian reservations. The Department has the authority to license foster care homes operated by tribal members located on a reservation only if the tribe does not engage in such licensing activity.

Very truly yours,

Mike Greely

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 77

CITIES AND TOWNS - Special assessments to be paid by city taking assignment of county's rights in tax property;
COUNTIES - Duty to take tax deed to subdivision property struck off following a tax sale;
LIENS - Effect of tax deed on special assessment liens;
PROPERTY, REAL - Assignment of rights to property sold to county following tax sale;
SPECIAL IMPROVEMENT DISTRICTS - Collection of accelerated assessments following tax sale;
TAXATION AND REVENUE - Collection of accelerated special assessments following tax sale;
MONTANA CODE ANNOTATED - Sections 7-12-4183, 7-12-4191, 15-17-101(1)(b), 15-17-201, 15-17-207, 15-17-303, 15-18-101, 15-18-203, 15-18-309, 85-7-2152;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 15 (1983).

HELD: 1. A city must pay all delinquent taxes, including special assessments, to a county to effect an assignment of the rights of the county in property struck off following a tax sale.

2. A county is not required to take a tax deed to subdivision property struck off following a tax sale.

3. Following issuance of a tax deed to a county, the county is not responsible for payment of accelerated delinquent special assessments due prior to issuance of the deed.

1 August 1986

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following questions concerning the rights of Gallatin County and the City of Belgrade to certain municipal property struck off to the county following a tax sale:

1. If a city proposes to take an assignment of rights from a county in real property pursuant to section 15-17-303, MCA, and that property is subject to accelerated delinquent special assessments as well as real property taxes, may the county assign its right to the city with the city paying the delinquent taxes, penalties, costs, and interest, but without the city paying the accelerated delinquent special assessments?

2. If the rights of the county to property struck off to the county pursuant to section 15-17-207, MCA, are not assigned, is the county required to take a tax deed to the property under section 15-18-203, MCA?

3. If the county takes a tax deed to property and is unable to sell the property pursuant to section 7-8-2301, MCA, is the county responsible for paying the accelerated delinquent special assessments to the city?

4. If the city has insufficient funds to pay the accelerated assessments, may it nevertheless take assignment of the county's rights in the property, auction the property off and then place the proceeds into the appropriate special improvement district funds?

5. If the answer to question No. 4 is in the affirmative, is the city bound to the same marketing procedures as the county under sections 7-8-2213(2), 7-8-2214, and 7-8-2218, MCA?

These questions arise from a factual situation that has become increasingly common in Montana counties with urban populations: Subdividers who are unable to market lots following the creation of special improvement districts and levy of assessments have defaulted on the payment of the special assessments and general taxes.

In your situation special improvement districts were created for water, sewer, and street improvement within the Bullthistle subdivision in the City of Belgrade. The developer of the subdivision retained several lots and defaulted on the payment of the special improvement assessments as well as the property taxes. The Belgrade City Council accelerated the assessments and, pursuant to section 7-12-4183, MCA, certified the delinquent assessments to the Gallatin County Clerk and Recorder for collection. This statute grants a city council the option to make all future installments delinquent and immediately payable when any one installment becomes delinquent. Following acceleration, the total amount of delinquent taxes was approximately $194,000, of which only $5,000 was attributable to general property taxes.

The property was offered for sale pursuant to section 15-17-201, MCA. Because there was no purchaser at the tax sale, the property was deemed purchased by, or "struck off" to, the county in accordance with section 15-17-207, MCA. Gallatin County received a tax sale certificate and has continued to hold the certificate since no offer of redemption was made during the statutory 36-month period of redemption.

Gallatin County is empowered to assign its interests in the subdivision by section 15-17-303, MCA. That statute in relevant part provides:

> Assignment of rights of county. (1) At any time after any parcel of land has been bid upon by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who pays the amount for which the same was bid, with interest upon the original tax at the rate of 5/6 of 1% per month and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent.

Gallatin County has not taken a tax deed to the property as allowed by section 15-18-203, MCA, and Belgrade is interested in acquiring title to the lots. Belgrade has joined in your opinion request which is largely concerned with whether the City must pay the accelerated delinquent special improvement assessments to the county treasurer to effectuate a valid assignment of rights.

1. Assignment of the Rights of the County.

The purpose of the statutory assignment provision is to allow a county to free itself of property encumbered by liens without waiting for the conclusion of the period of redemption. A third-party assignee thereby acquires a property interest subject to the owners' right of redemption and assumes the risk that this interest may not ripen into a clear title because of later redemption. Case law in this state has held that, when property is struck off to a county and the county assigns its interest, the assignee does not have title, but an inchoate right which can ripen into a title "free from all encumbrances." Higgins v. Montana Hotel Corporation, 181 Mont. 149, 153, 592 P.2d 930, 933 (1979).

Unless a tax sale results in payment of all outstanding taxes, the property remains encumbered. Section 7-12-4191, MCA, provides that any special assessment levied upon a piece of property creates a lien upon that property and that the lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

Were it not for the assignment statute, § 15-17-303, MCA, a county would be without any authority to assign its interest in tax sale property. When an assignment is made, the statutory terms and conditions must be fully satisfied. The statute specifically states that the assignee must pay the amount for which the property was bid at the tax sale. No provision is included for an assignment following partial payment of the delinquent general taxes, excluding the special assessment taxes. Unpaid special assessments are to be treated in the same manner as general taxes and the property sold in a similar manner. § 7-12-4183, MCA. The notice of tax sale includes recognition of delinquent municipal assessments. § 15-17-101(1)(b), MCA. Thus, the amount for which tax property is bid at a tax sale includes any outstanding special assessments. There is no exemption from full payment created for an assignment to a municipality. All purchasers of the assignment stand on equal footing: Upon payment of the total amount of delinquencies the assignment is complete whether the assignee is a private party or a governmental body.

My conclusion that an assignee under section 15-17-303, MCA, must pay all taxes including assessments is analogous to a prior opinion in which I held that the period of redemption cannot be extended by payment of part of the delinquent taxes. In 40 Op. Att'y Gen. No. 15 (1983) I invalidated Missoula County's practice of allowing the owner of property struck off to the county to pay one year's delinquent taxes and forestall issuance of a tax deed for an additional year. Our statutes provide only a three-year period of redemption during which a redemptioner can avoid issuance of a tax deed by payment of delinquent taxes. § 15-18-101, MCA. I was therefore unable to read into the statutes a process for "partial redemption." Similarly, I refuse to recognize a right of "partial assignment" that extends to a municipality. My conclusion is also equitable when viewed from the perspective of the prior owner of the property during the period of the redemption. That owner, in order to redeem, must pay the full amount of delinquency to the county or its assignee. A municipal assignee that had received its interest at a discount--payment of only general taxes--would receive a windfall from a redemptioner making full tender of all delinquencies.

For the foregoing reasons I conclude that Belgrade must pay all delinquent taxes including the accelerated special assessments in order to take an assignment of the rights of Gallatin County.

2. Duty of the County to Take a Tax Deed.

You have asked whether Gallatin County has a duty to take a tax deed. The relevant statute is section 15-18-203, MCA:

> Application for tax deed by local governing body. Whenever a county, city, or town becomes the purchaser of property sold for delinquent taxes and is the holder of the

> certificate of sale when the time for redemption expires, the board of county commissioners, city or town council or commission at any time thereafter deemed proper may order and direct the county clerk and recorder, city or town clerk to apply to the county or city treasurer or town clerk, as the case may be, for the issuance to the county, city, or town of a tax deed for such property.

The statute employs discretionary language stating that the board _may_ order and direct the county clerk to apply for a deed. Some Montana cases have found this authority to be mandatory although the circumstances are distinguishable. In one case, _Malott v. Board of Commissioners of Fergus County_, 86 Mont. 595, 285 P. 932 (1930), the Court found the language of section 2209, R.C.M. 1921 (precursor to section 15-18-203, MCA), permissive but concluded that it must be construed as mandatory where the interests of an irrigation district were concerned. The holding was explained three years later in _Malott v. Cascade County_, 94 Mont. 394, 22 P.2d 811 (1933). There the Court stated that a trust relationship exists between a county commission and an irrigation district that has received a debenture certificate in accordance with section 7243, R.C.M. 1921 (precursor to section 85-7-2152, MCA). In deciding that the county becomes a trustee, the Court noted: "This is but one of the puzzles which may be expected to appear from time to time in the operation of Montana's maladroit irrigation law." 94 Mont. at 406, 22 P.2d at 816. Given this comment on the original _Malott_ holding and the clear language of the tax deed statute, "may order and direct," I find that the prior Supreme Court's decisions should be considered limited to their facts, i.e., where an irrigation district's property and bondholders are involved. Thus, a county is under no obligation to take a tax deed to subdivision property it holds under a tax sale certificate. _Accord_ 85 C.J.S. _Taxation_ § 920 (1954).

3. _Responsibility for Payment of Accelerated Delinquent Special Assessments._

A further question advanced by Gallatin County is whether the County would be responsible for payment to the City of Belgrade of the accelerated assessments after it takes a tax deed. Section 15-18-309, MCA, establishes the effect of a tax deed. This statute states in relevant part:

> Effect of deed. The deed issued under this or any other law of this state shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and the lien of any special, local improvement, irrigation, and drainage assessments levied against the property, payable after the execution of said deed ....

This statute clearly leaves unaffected special assessments payable after execution of the tax deed, but extinguishes those payable before the taking of the deed. The Legislature possesses power to declare when liens for municipal taxes shall exist and also has the authority to declare when liens for municipal taxes shall cease. McQuillin, Municipal Corporations § 44.147 (3d ed.).

In the circumstances described in your opinion request, the Belgrade City Council accelerated the future assessment payments under the authority of section 7-12-4183(2), MCA. Because of this acceleration all assessment payments became due and were payable immediately. Thus, since none of the payments is due subsequent to issuance of a tax deed for the property, the assessment lien would be extinguished in its entirety. Under the plain operation of section 15-18-309, MCA, the County would not be responsible for the past-due accelerated payments once a tax deed is acquired.

The questions raised by the City of Belgrade enumerated four and five are rendered moot by the prior holdings of this opinion. As I have stated, Belgrade may not take an assignment of the rights of Gallatin County without tendering the full amount of delinquent taxes, including the accelerated assessments. Where a city has accelerated future assessments and these sums are substantial, the present statutory procedure under which tax sale lands are struck off to the county is admittedly inequitable from the standpoint of the municipality. Nevertheless, I am constrained to interpret the tax property statutes as enacted.

THEREFORE, IT IS MY OPINION:

1. A city must pay all delinquent taxes, including special assessments, to a county to effect an assignment of the rights of the county in property struck off following a tax sale.

2. A county is not required to take a tax deed to subdivision property struck off following a tax sale.

3. Following issuance of a tax deed to a county, the county is not responsible for payment of accelerated delinquent special assessments due prior to issuance of the deed.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the 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 statutes 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 list 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 March 31, 1986. This table includes those rules adopted during the period March 31, 1986 through June 30, 1986, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1986, 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 1986 Montana Administrative Register.

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