MONTANA ADMINISTRATIVE REGISTER

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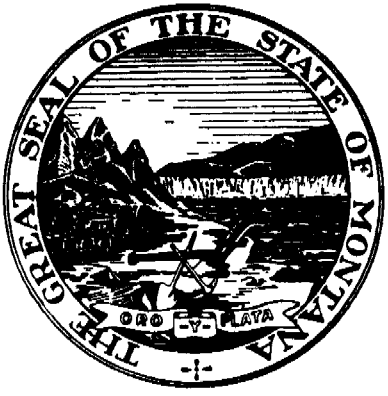

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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DEPARTMENT OF COMMERCE
STATE OF MONTANA
BEFORE THE MILK CONTROL BUREAU

In the matter of the amendment of rule 8.79.301 regarding licensee assessments	) NOTICE OF PROPOSED AMENDMENT) OF RULE 8.79.301 LICENSEE) ASSESSMENTS)) NO PUBLIC HEARING CONTEMPLATED)) DOCKET #73-86

TO: All Interested Persons:

1. On March 27, 1986 the Department of Commerce proposes to amend Rule 8.79.301 relating to an assessment to be levied upon licensees subject to 81-23-202, MCA. The proposed amendment will become effective July 1, 1986.

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

"8.79.301 LICENSEE ASSESSMENTS

(1) Pursuant to section 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the fiscal year beginning July 1, ~~1985~~ 1986, and ending June 30, ~~1986~~ 1987, are hereby levied upon the Milk Control Act licensees of this department.

(a) A fee of nine cents ($0.09) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

(b) A fee of nine cents ($0.09) per hundredweight on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of four and one half cents ($0.045) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of four and one half cents ($0.045) per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor."

3. Interested persons are asked to note that there is no change in the amount of the assessment proposed for fiscal year 1987. The purpose of the amendment is merely to change the effective dates from July 1, 1985 through June 30, 1986 to July 1, 1986 through June 30, 1987.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Commerce, 1520 East Sixth Avenue, Helena, Montana, no later than March 15, 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 along with any written comments he has to the above address no later than March 15, 1986.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty five (25), whichever is less, of the persons who are directly affected by the proposed amendment from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent (10%) of those persons directly affected has been determined to be 29 persons based on an estimate of 299 resident and non-resident producers, producer-distributors, and jobbers subject to this assessment.

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

KEITH COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State February 3, 1986.

STATE OF MONTANA
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the proposed amendment of 8.94.3701 concerning the administration of the Federal Community Development Block Grant Program	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.94.3701 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE CDBG PROGRAM

TO: All Interested Persons.

1. On March 5, 1986, at 1:30 p.m., a public hearing will be held in Room C-209 of the Cogswell Building, Helena, Montana, to consider the amendment of the rules governing the administration of the federal Community Development Block Grant (CDBG) program which the department originally adopted by reference on June 13, 1985.

2. The proposed amendment of 8.94.3701 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3429, Administrative Rules of Montana)

"8.94.3701 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1985 Application Guidelines as amended on [the effective date of this amendment] and the Montana Community Development Block Grant Program -- 1984 Grant Administration Manual published by it as rules for the administration of the CDBG program.

(2) (a) through (k) will remain the same.

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

Auth: 90-1-103, MCA Imp: 90-1-103, MCA

3. The proposed amendment would modify paragraph IV, 2, Number of Applications Permitted Per Applicant, of the Department's Montana Community Development Block Grant Program 1985 Application Guidelines, page 21, which now reads:

> Eligible applicants may submit one application to the September 30, 1985 regular competition and one application to the March 3, 1986 economic development competition. Applicants may be awarded a maximum of one grant per program year.

Under the proposed amendment this paragraph would read as follows:

Applicants may be awarded a maximum of two grants per program year:
-- one from the economic development category, and
-- one from the housing and neighborhood revitalization, public facilities, or multipurpose categories.
Auth: 90-1-103, MCA Imp: 90-1-103, MCA

4. This amendment is being proposed at the request of a local government unit to increase the flexibility of the CDBG economic development setaside and to make CDBG assistance more accessible to Montana businesses.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than March 13, 1986.

6. Richard M. Weddle will preside over and conduct the hearing.

DEPARTMENT OF COMMERCE

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, February 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the proposed adoption by reference of new rules for the administration of the federal community development block grant program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED RULES PERTAINING TO THE ADMINISTRATION OF THE 1986 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

TO: All Interested Persons.

1. On March 5, 1986, at 2:30 p.m., a public hearing will be held in Room C-209 of the Cogswell Building, Helena, Montana to consider the adoption by reference of rules for the administration of the federal community development block grant program.

2. The proposed adoption will provide as follows:

"I. INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1986 Application Guidelines published by it as rules for the administration of the CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) the policies governing the program,

(b) threshold requirements for applicants,

(c) the procedure for evaluating applications,

(d) administrative procedures for local project start up, and

(e) special administrative considerations peculiar to public facilities, housing rehabilitation, and economic development projects.

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

Auth: 90-1-103, MCA Imp: 90-1-103, MCA

3. This rule, proposed pursuant to section 90-1-103, MCA, and the recommendation of the Legislative Interim Code Committee, will establish, within the context of the administrative procedure act, guidelines, ranking criteria, and requirements governing the 1986 CDBG program. The federal guidelines which govern the CDBG program require the adoption of such policies, etc. by the state agency which administers the program.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than March 13, 1986.

5. Richard M. Weddle, Attorney, Helena, Montana, will preside over and conduct the hearing.

DEPARTMENT OF COMMERCE

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, February 3, 1986.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 10.57.212 Minimum Scores on the National Teacher Examination Core Battery) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE 10.57.212, MINIMUM SCORES ON THE NATIONAL TEACHER EXAMINATION CORE BATTERY

TO: All Interested Persons.

1. On March 20, 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 adoption of Rule 10.57.212, Minimum Scores on the National Teacher Examination Core Battery.

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

RULE I MINIMUM SCORES ON THE NATIONAL TEACHER EXAMINATION CORE BATTERY (1) The board designates the following levels as minimum qualifying scores:

(a) Communication Skills.....648
(b) General Knowledge.....644
(c) Professional Knowledge.....648

AUTH: Sec. 20-2-121(1) MCA
IMP: Sec. 20-4-102(1) and (5) MCA

3. The Board is proposing this rule to fulfill the purpose of section 20-4-101(1) MCA, "to ensure the maintenance of professional standards" for teaching and supervisory personnel, and (2) to ensure that all teachers and administrators who are entering the Montana educational system either from within Montana or from outside possess the basic competencies related to their profession.

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 March 19, 1986.

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

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Hidde Van Duym

Certified to the Secretary of State February 3, 1986

MAR Notice No. 10-3-96

3-2/13/86

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.55.402, Basic Instructional Program: High School, Junior High, Middle School and Grades 7 and 8 Budgeted at High School Rates)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.55.402, BASIC INSTRUCTIONAL PROGRAM: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES

TO: All Interested Persons.

1. On March 20, 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 10.55.402, Basic Instructional Program: High School, Junior High, Middle School and Grades 7 and 8 Budgeted at High School Rates.

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

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

(9) Basic instructional program for junior high school, ~~middle school,~~ and grades 7 and 8 budgeted at high school rates must offer:

(a) Language arts: 3 units in junior high and 2 units for ~~middle school, and 7th and 8th grades~~ grades 7 and 8.

(b) Social sciences: 3 units in junior high and 2 units in ~~middle school and 7th and 8th grades~~ grades 7 and 8.

(c) Mathematics: mathematics offerings are to include both algebra and general math in grade 9. Three units in junior high and 2 units in ~~middle school and 7th and 8th grades~~ grades 7 and 8.

(d) Science: 3 units in junior high and 2 units in ~~middle school and 7th and 8th grades~~ grades 7 and 8.

(e) Health and physical education: 1/2 unit each year in junior high and 1/2 unit each year in ~~middle school and 7th and 8th grades~~ grades 7 and 8.

(f) Art: 1/2 unit each year in junior high and 1/2 unit each year in ~~middle school and 7th and 8th grades~~ grades 7 and 8.

(g) Music: 1/2 unit each year in junior high and 1/2 unit each year in ~~middle school and 7th and 8th grades~~ grades 7 and 8.

(h) Practical arts includes home economics, industrial arts, business education and agriculture): 1/2 unit each year in junior high and 1/2 unit each year in ~~middle school and 7th and 8th grades~~ grades 7 and 8.

(10) The minimum instructional program for grades 7 and 8 in middle schools budgeted at the high school rate shall offer:

(a) Language arts: 2 units in English and language arts which shall include literature, writing, speaking, listening,

critical thinking/reasoning, spelling, and penmanship.

(b) Social sciences: 2 units in the middle school, 7th and 8th grades.

(c) Mathematics: 2 units in the middle school, 7th and 8th grades.

(d) Science: 2 units in the middle school, 7th and 8th grades.

(e) Health and physical education: 1/2 unit each year in the middle school, 7th and 8th grades.

(f) Exploratory courses: One unit of exploratory work during each year at grades 7 and 8 which shall include music, art, and practical arts (to include one of the following: home economics, industrial arts, business education, and agriculture.) Foreign language may be added to the exploratory program if certified staff is available. The length of the classes for each of these offerings can vary to meet the desires of the local educational unit. The total offerings must equal one unit.

~~(10)~~ (11) A unit is defined as the equivalent of at least 225 minutes per week in non-laboratory courses and 250 minutes per week in courses that require laboratory work. Units in grade 9 shall be equivalent to units of credit for high school graduation requirements. Passage time between classes may be counted toward the standard school day.

AUTH: Sec. 20-2-121(7), 20-7-101, and 20-7-111 MCA
IMP: Sec. 20-7-111, 20-2-121(7), and 20-7-101 MCA

3. The purpose of the amendment is to improve quality of instruction in the middle school level and particularly to provide for a curriculum best suited to the learning capabilities of the age level of the pupils involved.

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 March 19, 1986.

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

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Hidde Van Duym

Certified to the Secretary of State February 3, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.55.202, Board of Trustees	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.55.202, BOARD OF TRUSTEES

TO: All Interested Persons.

1. On March 20, 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 10.55.202, Board of Trustees.

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

10.55.202 BOARD OF TRUSTEES (1) Boards shall conduct ~~regular monthly~~ meetings and keep records in accordance with state law.

(2) Each school district shall formulate a written comprehensive philosophy of education which reflects the special instructional needs of students at the elementary, middle/junior high school and high school levels, and a statement of goals which describes the district's particular philosophy. The school district shall publicize the availability of such statements so that persons so wishing may secure a copy, and such statement shall be reviewed annually by each school district and revised as deemed necessary.

(3) through (8) remain the same.

AUTH: Sec. 20-7-101 MCA
IMP: Sec. 20-1-301 and 20-1-303 MCA

3. The purpose of the rule is to provide relief for small school boards.

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 March 19, 1986.

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

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Hidde Van Duym

Certified to the Secretary of State February 3, ~~1986~~

3-2/13/86 MAR Notice No. 10-3-98

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.55.302, Certificates	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.55.302, CERTIFICATES

TO: All Interested Persons.

1. On March 20, 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 10.55.302, Certificates.

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

10.55.302 CERTIFICATES (1) and (2) remain the same.

(3) County superintendents shall receive from the schools a list of district professional staff and their assignments and shall advise school districts of professional staff who do not have current registered certificates. In accordance with state law, salary shall be withheld from teachers who have not registered their certificates in the office of the county superintendent within 60 calendar days after their term of service begins.

(4) through (6) remain the same.

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

3. The purpose of this rule is to ensure the state system of teacher certification is regulated and to enable county superintendents to regulate that system in a manner that is in conformance with 20-4-101, 20-4-202, and 20-3-205(3) MCA.

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 March 19, 1986.

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

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Hidde Van Duym

Certified to the Secretary of State February 3, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.55.505, Safety	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.55.505, SAFETY

TO: All Interested Persons.

1. On March 20, 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 10.55.505, Safety.

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

10.55.505 SAFETY (1) Fire drills ~~should~~ shall be conducted in accordance with state statutes. Statutes of 1985 require eight per school year.

(2) through (5) remain the same.

AUTH: Sec. 20-7-101 MCA
IMP: Sec. 20-1-401 MCA

3. The purpose of the rule is to eliminate confusion and bring the accreditation standards in conformance with state law.

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 March 19, 1986.

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

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Hidde Van Duym

Certified to the Secretary of State February 3, 1986

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 23.7.111 adopting the Uniform Fire Code by reference.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 23.7.111 adopting the Uniform Fire Code by reference.
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On March 15, 1986, the Department of Justice proposes to amend rule 23.7.111 which adopts and incorporates the Uniform Fire Code and appendices.

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

23.7.111 UNIFORM FIRE CODE (1) The Department of Justice hereby adopts and incorporates by reference the Uniform Fire Code, International Conference of Building Officials, 1982~~5~~ edition, and ~~the~~ appendices ~~listed in subsections (a) through (g)~~ with the modifications appearing in subsections (2) through (7). Copies of the Uniform Fire Code and appendices may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. Information is available upon request from the State Fire Marshal Bureau, Department of Justice, 303 North Roberts, Helena, Montana 59620.

~~(a) Appendix I-B: Stairway identification;~~

~~(b) Appendix II-A: Suppression and Control of Hazardous Fire Areas;~~

~~(c) Appendix II-B: Protection of Flammable or Combustible Liquids in Tanks in Locations That May Be Flooded;~~

~~(d) Appendix III-A: Test Procedures for Fire Extinguishing Systems;~~

~~(e) Appendix III-C: Fire Alarm Systems;~~

~~(f) Appendix IV-A: Interior Floor Finish;~~

~~(g) Appendix VI-B: Model Citation Program.~~

(2) As is.

(3) As is.

~~(4) The Department of Justice also amends Section 61.105, of the Uniform Fire Code, to include:~~

~~EXCEPTION: Commercial or industrial occupancies using burners designed to burn crankcase oil or waste oil containing gasoline. Such burners shall be approved, and shall be installed in accordance with the manufacturer's instructions and the terms of their listing.~~

(4) The Department of Justice does not adopt the following appendices:

II-C: Marinas.

II-D: Rifle Ranges.

V-A: Nationally Recognized Standards of Good Practice.

Division VI: Informational.

(5) As is.
(6) As is.
(7) This rule establishes a fire protection code to be used in conjunction with the Uniform Building Code, ARM ~~2.32.101~~ 8.70.101.

AUTH: 50-3-102(2)(a) and 50-61-102, MCA
IMP: 50-3-102 and 50-61-102, MCA

3. It is the intent of the Fire Marshal Bureau to use the Uniform Fire Code in conjunction with the Uniform Building Code as adopted by Rule 8.70.101 of the Administrative Rules of Montana, by the Department of Commerce. The Uniform Fire Code and the Uniform Building Code are companion codes.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Robert E. Kelly, State Fire Marshal, Room 371, Scott Hart Building, 303 North Roberts, Helena, Montana 59620, no later than March 13, 1986.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert E. Kelly, State Fire Marshal, Room 371, Scott Hart Building, 303 North Roberts, Helena, Montana 59620, no later than March 13, 1986.

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

7. The authority of the agency to make the proposed amendment is based on sections 50-3-102(2)(a) and 50-61-102, MCA, and the rule implements sections 50-3-102 and 50-61-102, MCA.

MIKE GREELY
Attorney General

Certified to the Secretary of State February 3, 1986.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of Proposed Adoption of New Rules Regarding the Montana Telecommunications Act and New Rules for Minimum Rate Case Filing Requirements for Telephone Utilities	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES REGARDING THE TELECOMMUNICATIONS ACT AND NEW RULES FOR MINIMUM RATE CASE FILING REQUIREMENTS FOR TELEPHONE UTILITIES

TO: All Interested Persons

1. On March 6, 1986, in the Commission Conference Room 2701 Prospect Avenue, Helena, Montana at 9 a.m., a hearing will be held to consider the proposed adoption of rules regarding the Montana Telecommunications Act and minimum rate case filing requirements for telecommunications utilities.

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

3. The proposed rules provide as follows:

Rule I PURPOSE (1) It remains the policy of the State of Montana to maintain universal basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the State's policy to encourage competition in the telecommunications industry, thereby allowing access by the public to advances in telecommunications technology. It is the purpose of the Montana Telecommunications Act and these rules to provide a regulatory framework that will allow an orderly transition, where appropriate, from a regulated telecommunications industry to a competitive market environment. Nothing in these rules preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitve activity.

(2) Regulatory jurisdiction exists over basic telecommunications service that is two-way switched, voice grade access and transport of communications originating and terminating in this state and nonvoice grade access and transport if intended to be converted to or from voice-grade access and transport. The Commission retains the power to protect ratepayer interests by totally regulating the rates for telecommunication services that are provided on a monopoly basis.

(3) These rules, adopted pursuant to the Montana Telecommunications Act and in accordance with the Montana Administrative Procedures Act, may be cited as the Montana Telecommunications Act Rules.

AUTH: 69-3-822, MCA; IMP, 69-3-801, 69-3-802 and 68-3-824, MCA

Rule II DEFINITIONS (1) "Act" Means the Montana Telecommunications Act.

(2) "Commission" means the Montana Public Service Commission.

(3) "Private Telecommunications Service" means the construction, maintenance or operation of a system by a person or entity for the provision of telecommunications service for that person's or entity's sole and exclusive use and not for resale, directly or indirectly. The term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates and subsidiaries have a common ownership or control of 80 percent of the outstanding voting shares.

(4) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. Regulated telecommunications service does not include the provision of:

(a) terminal equipment used to originate or terminate regulated telecommunications service;

(b) private telecommunications service;

(c) resale of telecommunications service;

(d) one-way transmission of television signals;

(e) cellular communication; or

(f) radio paging or mobile radio service.

(5) "Resale of telecommunications service" means the resale of regulated telecommunications service. Telecommunication services may be resold with or without adding value, provided any added regulated service will result in regulation of the reseller.

(6) "Two-way switched, voice grade access and transport of communications originating and terminating in this state and nonvoice grade access and transport if intended to be converted to or from voice-grade access and transport" means basic telecommunications service, including any service, terms, charges or condition associated with or imposed to acquire or maintain basic telecommunications service.

AUTH: 69-3-822, MCA; IMP, 69-3-803 and 69-3-804, MCA

Rule III NOTICE (1) Any person or organization wishing to be on the Commission's telecommunications mailing list shall submit their name and address, in writing, to the Assistant Administrator, Utility Division, Montana Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620, and clearly indicate, by reference to this rule, that they want to be on the telecommunications mailing list. A yearly fee will be charged to recover the cost of this service.

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule IV SERVICE PRESUMED TO BE BASIC TELECOMMUNICATIONS SERVICE (1) All telecommunications service is presumed to be basic telecommunications service except those services listed in 69-3-803 (3), MCA. The rules applicable to the regulation of public utilities continue to apply to the regulation of basic telecommunications service. Telecommunications services regulated at the date of adoption of these rules continue to be regulated unless deregulated by statute and the tariff with-

drawal approved by this Commission.
AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule V INFORMATION REQUIRED TO DETERMINE STATUS OF SERVICE AS REGULATED OR NONREGULATED (1) A telecommunications service provider may assert that a service it offers is not basic telecommunication service and should be nonregulated by informing the Commission of its intent to offer the service as nonregulated no later than 90 days prior to offering the service as nonregulated. The following information shall be provided to the Commission:

(a) the name and address of the provider;

(b) a complete description of the service asserted to be nonregulated, including an engineering description;

(c) a description of the market and geographic area in which the service is or will be offered;

(d) the type, and an estimate of the number, of existing or potential customers offered the service; and,

(e) an affidavit that all customers of the service, if any, have been appropriately informed of the provider's intent to offer the service as nonregulated;

(f) an affidavit that all persons and organizations on the telecommunications mailing list have been notified as required in Rule VI.

(g) The Commission may require additional information from the provider.

(2) Any interested party may assert that a telecommunications service should be offered as nonregulated telecommunications. The burden of proof is on the party attempting to establish that the service is not basic telecommunication service. Such a request will be considered a complaint subject to the requirements of ARM 38.2.2101 through 38.2.2107.

(3) The Commission may initiate an inquiry regarding whether a regulated telecommunications service should be offered as nonregulated.

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule VI NOTICE OF FILING TO INTERESTED PERSONS AND PROVIDERS (1) When, under Rule V, a telecommunications service provider files its intent to offer a nonregulated service, it must notify all persons and entities on the telecommunications mailing list that it asserts that the service is not basic telecommunications service. The notification shall contain the name and address of the provider, a description of the service asserted to be nonregulated and the mailing date.

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule VII COMMISSION PRIMARY JURISDICTION (1) The Commission shall have primary jurisdiction to determine if a telecommunications service is basic telecommunications service subject to regulation. To make its determination the Commission may use contested case procedure or make its determination after a public hearing or, if there is no substantive factual question, act without a hearing.

(2) If the Commission acts without a hearing:

(a) Any telecommunications provider or customer may comment in writing on the assertion that a telecommunications service is not basic telecommunications service by filing comments with the Commission within 20 days of the mailing date of the notification required in Rule VI. The Commission may consider these comments in making its determination.

(b) The Commission shall inform the provider that it has accepted or rejected its assertion that the service is nonregulated within 60 days of the filing of the information. If the Commission takes no action within 60 days, the provider may consider the service nonregulated.

(3) If the Commission requires a hearing:

(a) It must promptly schedule the hearing and must give written notice as required in 38.2.1801.

(b) Any telecommunications provider or customer may comment in writing on the assertion that a telecommunications service is not basic telecommunications service by filing comments with the Commission within 20 days of the notice of hearing required by 38.2.1801. The Commission may consider these comments in making its determination.

(c) The Commission must inform the telecommunication provider that it has accepted or rejected its assertion that the service is nonregulated within 60 days of the hearing.

(4) Not less than 10 days prior to offering the service as nonregulated the telecommunications provider shall inform current customers, if any, that the service will no longer be regulated.

AUTH: 69-3-822, 69-1-110(3) MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule VIII ADDITIONAL INFORMATION THAT MAY BE REQUIRED FROM REGULATED PROVIDERS (1) If the Commission determines that a service is nonregulated and the telecommunications provider also provides regulated telecommunications service the Commission may require information regarding:

(a) the revenues of and the cost of providing the nonregulated service;

(b) the loss, if any, in net expected contribution to the revenue requirement of regulated service caused by the deregulation; and

(c) whether the provider proposes to adjust rates in its regulated service to compensate for the loss of contribution.

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule IX PROCEDURE TO RE-REGULATE A TELECOMMUNICATION SERVICE (1) The Commission may initiate an examination of whether a nonregulated telecommunications service is basic telecommunications subject to its jurisdiction.

(2) Any interested party may request an examination of whether an unregulated telecommunications service is basic telecommunications service subject to Commission jurisdiction. The burden of proof is on the party attempting to establish that the service should be regulated. Such a request

will be considered a complaint subject to the requirements of ARM 38.2.2101 through 38.2.2107.

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule X PROHIBITION AGAINST CROSS-SUBSIDIZATION (1) No provider of regulated telecommunications service may use current revenues earned or expenses incurred in conjunction with a regulated service to subsidize a nonregulated service. The accounting records of the provider shall be kept in a manner that provides adequate information to detect cross-subsidization. The Commission has the authority to determine the proper allocation of revenues, expenses and common investment between regulated and nonregulated service.

(2) Commission review to determine the proper allocation between regulated and nonregulated service may be in a rate case or the Commission may initiate an investigation.

(3) An accounting or tracking system shall be implemented by each telecommunications provider to separate all revenues and costs that are not regulated by this Commission.

(a) If the Commission finds it necessary it may require a telecommunications provider to maintain entirely separate records and accounts of nonregulated or detariffed telecommunications service.

(4) On finding that a nonregulated service is subsidizing regulated service the Commission may eliminate the subsidy by any method it deems appropriate.

(5) Nothing in Title 69, Chapter 5, Part 8 precludes the Commission from exercising its authority under 69-3-202, MCA.

AUTH: 69-3-822, MCA; IMP, 69-3-806 and 69-3-202, MCA

Rule XI MANNER OF REGULATION OF TELECOMMUNICATION SERVICE (1) All regulated telecommunications service providers shall file a statement of provision of telecommunications service with the Commission. All current providers shall file within six months of the enactment of these rules. Thereafter any telecommunications provider shall inform the Commission of any change within 30 days of the change.

(2) the statement shall contain the following information:

(a) the name and address of the provider;

(b) a description of the telecommunications services offered including type of facilities used;

(c) the geographic area served;

(d) a description of the market served;

(e) tariffs for the regulated telecommunications service, if not on file, or a request that tariffs not be required by the Commission; and

(f) such other information as the Commission may require to accomplish the purpose of the Act.

(3) The provision of any regulated telecommunications service does not subject the provider to regulation of any other telecommunications service otherwise exempt under the Act.

AUTH: 69-3-822, MCA; IMP, 69-3-805

Rule XII REGULATION OF RATES AND CHARGES (1) All regu-

lated telecommunications service may be subject to this rule. Nothing in these rules authorizes the detariffing of any service for which there is no alternative provider of such service.

(2) The Commission may establish specific rates, tariffs, or fares for the provision of regulated telecommunications service to the public. Alternatively, the Commission may authorize the provision of regulated telecommunications service under such terms and conditions as may best serve the State's telecommunications policy.

(3) The Commission may initiate a determination of whether alternatives to rate setting are appropriate or the telecommunications provider or an interested party may request a determination. If the Commission initiates the determination it must notify all parties on the telecommunications mailing list that it intends to consider alternatives to rate setting and may give any additional notice it deems appropriate. If a telecommunications provider or an interested party petitions the Commission for an alternative to rate setting it shall notify all parties on the telecommunications mailing list. To make its determination the Commission may use contested case procedure, require a public hearing, or, if there is no material factual question, act without a hearing.

(4) A petition for an alternative to specific rates, tariffs or fares pursuant to 69-3-807 2 (a) through (e), MCA, shall contain the following information:

(a) a complete description of the service proposed to be detariffed;

(b) the number and type of customer affected;

(c) the service territory in which the proposed detariffed service will be offered;

(d) the name and address of alternative service providers offering the service in the territory;

(e) the justification for detariffing the service; and

(f) an affidavit that all persons and entities on the telecommunications mailing list have been notified as required in part (3) of this rule.

(g) the Commission may require additional information to make its determination.

AUTH: 69-3-822, MCA; IMP, 69-3-807, MCA

Rule XIII ALTERNATIVE TO RATE SETTING (1) To determine if any of the alternatives to rate setting listed in part (2) of this rule are appropriate, the Commission shall consider the following:

(a) the number, size and distribution of alternative providers of service;

(b) the extent to which service is available from alternative providers in the relevant market;

(c) existing economic barriers to market entry;

(d) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(e) the overall impact of the proposed terms and conditions on the continued availability of existing service at

just and reasonable rates; and

(f) any other factors the Commission considers relevant to promote the purpose of this Act.

(2) If the Commission determines that an alternative to rate setting is appropriate for the telecommunications service the Commission may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for the service standards and requirements;

(c) detariff rates but require notice of price changes to the Commission and customers;

(d) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum is cost compensatory; or

(e) establish any other rate or service regulation that promotes the purpose of this Act or Rules.

(3) Twenty days prior to offering the service at a rate not set by this Commission, the telecommunications provider shall inform current customers that the service will no longer be tariffed.

AUTH: 69-3-822, MCA; IMP, 69-3-807, MCA

Rule XIV FILING REQUIREMENT OF DETARIFFED SERVICES (1) Any telecommunications provider offering regulated telecommunications service detariffed under Rule XIII shall maintain sufficient internal documentation to demonstrate that the revenues from detariffed operations are in excess of the incremental cost of providing the service. To the extent that detariffed operations do not cover incremental costs the Commission will not allow those costs to be recovered through the rates of regulated services.

AUTH: 69-3-822, MCA; IMP, 69-3-807, MCA

Rule XV PROCEDURES TO REQUIRE RE-TARIFFING (1) The Commission retains the right to require retariffing. A determination that a service should be retariffed is dependent on the factors listed in Rule XIII (1)(a) through (e).

(2) Any interested party may petition the Commission for a redetermination of whether an alternative to rate setting is appropriate. The burden of proof is on the party attempting to establish that the service should be tariffed. Such a request will be considered a complaint subject to the requirements of ARM 38.2.2101 through 38.2.2107.

(3) If the Commission intends to redetermine whether alternatives to rate setting are appropriate, it shall notify the telecommunication provider and all those on the telecommunications mailing list. If there is no material factual question the Commission may make its determination without a hearing. Any interested party may comment by filing written comments within 20 days of notification that the Commission intends to redetermine whether alternatives to rate setting are appropriate.

AUTH: 69-3-822, MCA; IMP, 69-3-807, MCA

Rule XVI FORBEARANCE (1) Any telecommunications provider may apply to the Commission for forbearance from regulation. The Commission shall determine if forbearing from regulation would facilitate competition. The application shall be verified and contain the following information:

(a) the name and address of the applicant;

(b) a description of the service to be offered and the facilities used to offer the service;

(c) the name and address of the customer to be served;

(d) the market area to be served;

(e) the party or parties offering similar alternative service to the customer;

(f) a description of the alternative service offered and the market area; and

(g) the Commission may require other information that is reasonably related to determine the existence of an alternative offer except information relating to the cost of providing the service.

(2) The Commission's determination shall be based on the existence of a viable competitive offer. The telecommunications service provider seeking forbearance has the burden of establishing that a viable competitive offer exists.

(3) The Commission shall approve or deny the application within ten days of receipt of the completed application. If the Commission takes no action within ten days, the application is granted. The Commission may by order defer action for up to five days.

AUTH: 69-3-822, MCA; IMP, 69-3-808, MCA

Rule XVII FILING OF NEGOTIATED CONTRACT (1) After notification that forbearance is granted the telecommunications service provider may negotiate with a customer for the provision of the service without regard to its filed tariffs. Within ten days of reaching a final contract, or other evidence of the service to be provided, the telecommunications provider shall file:

(a) A copy of the final contract;

(b) The charges and conditions of service.

(2) If no contract is reached the telecommunications provider must notify the Commission in writing.

AUTH: 69-3-822, MCA; IMP, 69-3-808, MCA

Rule XVIII BILLING (1) Regulated telecommunications service cannot be denied or terminated because of nonpayment of nonregulated service. A telecommunications provider's bill to customers shall clearly indicate regulated service and distinguish between tariffed and detariffed service. Regulated and nonregulated service may appear on the same bill but must be presented as separate line items.

(2) Partial payments of a bill shall be applied first to regulated service. Regulated service may not be effected by billing disputes over nonregulated service.

AUTH: 69-3-822, MCA; IMP, 69-3-102 and 69-3-201, MCA

Rule XIX LETTER OF TRANSMITTAL (1) The letter of a telecommunications utility transmitting a rate case to the Commission for filing shall contain a minimum of the following:

(a) List of documents submitted with the filing;

(b) List of names and addresses of those to whom copies of the rate case have been mailed;

(c) A brief description of the proposed changes in service, rates, and revenue levels;

(d) Reasons for the proposed changes;

(e) Estimated number of customers whose rates will be effected;

(f) List of names and phone numbers of utility employees or consultants who shall be responsible for answering questions concerning the rate case;

(g) List of names and addresses of utility employees or consultants who should be included on the service list.

AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XX APPLICATIONS FOR RATE INCREASES (1) Applications for rate increases exceeding $500,000 annually shall include, minimally, the information required in ARM Rule XXXI through Rule XXXVIII. Applications for rate increases not exceeding $500,000 annually shall contain such information the utility feels will allow the Commission to adequately evaluate the request for an increase in rates. Additional information may be required by the Commission or its staff subsequent to the time of filing.

(2) The original and ten copies of the letter of transmittal, the application, all testimony, and all statements required in ARM Rule XXXI through Rule XXXVIII inclusive shall be submitted to the Commission at the date of filing. Montana Consumer Counsel shall receive two copies of the same materials.

(3) One copy of all of the material required in these rules shall be submitted on computer diskettes compatible with either IBM personal computers or an IBM System 36.

(4) All or any part of the requirements of these rules may be waived by a quorum of the Commission upon a showing of good cause. Waiver of any requirements, however, shall not preclude the Commission from requiring the filing of specific cost data and material sufficient to support the application.

AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXI ANALYSIS OF TOTAL SYSTEM COSTS FOR A TWELVE MONTH HISTORICAL TEST YEAR (1) The application shall contain an analysis of total Montana costs as reflected on the filing utility's books for a test period consisting of 12 months actual experience ending no earlier than 9 months prior to the date of the filing of the application to increase rates. Any proposed adjustments to book costs shall be explained in writing. Such adjustments to book costs shall be shown separately and shall be fully supported, including schedules showing their derivation, where appropriate. However, no adjustments shall be permitted unless based on changes in facilities, opera-

tions, or costs which are known with certainty and measurable with reasonable accuracy at the time of the filing. No adjustment will be entertained unless it will become effective within 12 months of the last month of the test period.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXII OTHER DATA RELIED ON (1) If the applicant has relied on data other than those in statements A to I in support of its rate increase, such other data, appropriately identified and designated as such and separately stated, shall be submitted in addition to the data required in statements A to I.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXIII WORKING PAPERS TO BE FILED (1) Three sets of all detailed working papers or documentation supporting the filing and/or the statements described in these rules shall be submitted at the time the application is filed with the Commission. Such working papers shall be supplied by the applicant to intervenors on request.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXIV UNIFORM SYSTEM OF ACCOUNTS TO BE GENERALLY FOLLOWED (1) All statements and schedules shall be prepared in accordance with the Federal Communications Commission Uniform System of Accounts, provided that such action does not conflict with Montana law and the Commission's rules and orders. If the applicant believes that the FCC classifications are inconsistent with this Commission's orders, the applicant's treatment and the inconsistency shall be stated on all related materials disclosing full particulars properly cross-referenced to the filing. Computations and other information related to the inconsistency shall be available for examination by the staff and intervenors. The treatment of any cost or revenue item that is not in conformance with, or is inconsistent with, prior Commission orders is to be clearly identified and explained.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXV COST OF SERVICE DATA (1) With the initial application for a rate increase under these rules, the applicant shall submit a complete cost of service study supporting the services and customer classes receiving proposed rate increases and a clear showing that revenues from services or customer classes proposed to be excluded from a rate increase are covering costs.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXVI STATEMENT A -- BALANCE SHEET (1) Statement A shall include the balance sheets on a total company basis as of the beginning and end of the test period, and the most recent balance sheet.
AUTH: 69-3-103, MCA; IMP, 69-2-101, 69-3-821 and 69-3-822, MCA

Rule XXVII STATEMENT B -- INCOME STATEMENTS (1) Statement B shall include an income statement for the test period set forth as follows:

(a) Total Company;
(b) Total State;
(c) Regulated Total State;
(d) Regulated Intrastate.

AUTH: 69-3-103, MCA; IMP, 69-2-101, 69-3-821 and 69-3-822, MCA

Rule XXVIII STATEMENT C -- RATE BASE (1) Statement C shall include the average rate base proposed by the applicant set forth in a manner similar to the format shown in Statement B.

AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXIX STATEMENT D -- PLANT NOT USED AND USEFUL (1) Statement D shall set forth the cost and description of plant carried on the company's books as utility plant which is not used and useful.

AUTH: 69-3-103, MCA; IMP, 69-2-101 and 69-3-109, MCA

Rule XXX STATEMENT E -- ALLOCATION OF OVERALL ACCOUNTS (1) Statement E shall set forth the allocation of all overall accounts to obtain the amounts applicable to regulated service and shall provide a complete explanation of the method, procedures, and significant data used in making the allocation. All allocation factors shall be provided. Any method or procedure for allocating revenues or costs that has changed since the prior rate case must be specifically set forth and explained.

AUTH: 69-3-103, MCA; IMP, 69-3-821 and 69-3-822, MCA

Rule XXXI STATEMENT F -- AFFILIATED INTEREST TRANSACTIONS (1) If the expense or capital accounts contain charges or credits from associated entities of the applicant, submit for each such associated entity work papers showing the following:

(a) The amount of the charges or credits during the test period;
(b) The account classification or classifications charged or credited;
(c) Descriptions of the specific services performed for or by the associated entity;
(d) The basis used in determining the amounts of the charges or credits.

AUTH: 69-3-103, MCA; IMP, 69-2-101 and 69-3-821, MCA

Rule XXXII STATEMENT G -- INCOME TAXES (1) Statement G shall include a reconciliation between booked taxes and actual taxes paid. All adjustments shall be completely described and the amounts thereof shown separately. Amounts of deferred taxes debited and credited shall be shown separately. There also should be shown the amounts and basis of assignments of

taxes attributed to nonregulated operations. Any abnormalities such as nonrecurring gains, losses and deductions affecting the income tax for the test period shall be explained and the tax effect set forth.

AUTH: 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

Rule XXXIII STATEMENT H -- RATE OF RETURN (1) Statement H shall show the percentage rate of return claimed. The statement shall show the cost of debt capital, preferred stock capital, and common stock capital and the overall rate of return claimed based on the utilities capitalization. In addition, items required in ARM Rule XXXIV through Rule XXXVII, inclusive, shall be submitted as part of Statement H. In such cases where 50 percent or more of the common stock of the public utility is not held by the public but is owned by another corporation, the information required in Statement H shall also be submitted to the extent applicable with respect to the parent company.

AUTH: 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

Rule XXXIV DEBT CAPITAL (1) Statement H shall include the weighted average cost of debt capital based upon the following data for each class and series of long-term debt outstanding according to the most recently available balance sheet:

(a) Title;
(b) Date of issuance and date of maturity;
(c) Interest rate;
(d) Principal amount of issue;
(e) Net proceeds;
(f) Amount currently outstanding;
(g) Cost of money and yield to maturity based on the interest rate and net proceeds per unit outstanding determined by reference to any generally accepted table of bond yields;
(h) If issue is owned by an affiliate, state name and relationship of owner. Furnish a copy of the latest prospectus issued by the public utility, any superimposed holding company or subsidiary companies.

AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXXV PREFERRED STOCK CAPITAL (1) Statement H shall also show the weighted average cost of preferred stock capital based upon the following data for each class and series of preferred stock outstanding according to the most recently available balance sheet:

(a) Title;
(b) Date of issuance;
(c) Dividend rate;
(d) Par value of stated amount of issue;
(e) Issuance expenses;
(f) Net proceeds;
(g) Cost of money, that is, the dividend rate divided by net proceeds per unit or share;
(h) Amount outstanding;
(i) If issue is owned by an affiliate provide the name

and relationship of owner.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXXVI COMMON STOCK CAPITAL (1) Statement H shall include the following for each sale of common stock during the five year period preceding the most recently available balance sheet:
(a) Number of shares sold;
(b) Gross proceeds at offering price;
(c) Underwriters' discount or commission;
(d) Proceeds to the filing utility;
(e) Amount of issuance expenses;
(f) Net proceeds;
(g) Offering price per share;
(h) Net proceeds per share;
(i) Whether issue was offered to stockholders through subscription rights or to the public.
(2) Statement H shall also include the following information on outstanding common stock for the five calendar years preceding the end of the test period and by months for the 12 month test period:
(a) Average number of shares outstanding;
(b) Earnings per average share for only the five years preceding the test year;
(c) Annual earnings per share for the latest reported 12 month average;
(d) Annual dividend rate per share;
(e) Dividends listed as percent of earnings;
(f) Average market price based on the monthly high and low.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXXVII STATEMENT H-1 -- REACQUISITION OF BONDS OR PREFERRED STOCK (1) If any bonds or preferred stock have been reacquired by the utility during the 18 months prior to filing, show full details in Schedule H-1, including:
(a) Title or series;
(b) Principal amounts or par value reacquired;
(c) Reacquisition cost;
(d) Gain or loss on reacquisition.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXXVIII STATEMENT I -- COMPARISON OF SALES AND REVENUES (1) The application for a rate increase shall include a statement comparing rates, sales, and the revenues therefrom under the currently approved rate schedules and the rate schedules proposed to be superseded or supplemented. Such comparisons shall be applied to the sales levels for the 12 months of the test period. Such comparisons should be made for each rate schedule.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXXIX DEFICIENT FILINGS (1) The Commission shall, within 30 days of the filing by the utility of an application

for rate increases, notify the utility of any failure of the application to comply with requirements of these rules. The notice shall specify the deficiencies and grant the utility a reasonable period of time in which to supplement or correct the filing. If notice is not given within the 30 days of filing, the application shall be deemed to comply with these rules. The date of the initial filing shall be preserved unless the initial filing patently fails to substantially comply with these rules. No filing shall be deemed to have patently failed to substantially comply with rules if the Commission can reasonably judge the merits of the application and any deficiencies in the filing are corrected within 30 days. If the filing utility fails or refuses to provide information with respect to an expense, revenue, plant or other account item, but otherwise meets its burden of proof, the Commission may adjust the utility's revenue requirement to reflect the failure to meet the burden of proof as to the specific item.

AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

4. These rules are proposed to fulfill the purpose of the Montana Telecommunications Act pursuant to statutory authority in §§69-3-807 and 69-3-822, MCA.

5. Interested parties may submit their data, views or arguments concerning the proposed rules at the hearing, or in writing to Dennis Crawford, 2701 Prospect Avenue, Helena, Montana 59620, no later than March 13, 1986.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.

HOWARD L. ELLIS, Co-Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 3, 1986.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of interpretive rules relative to the implementation of Public Law 98-435 -- Voting Accessibility for Elderly and Handicapped Act	))))	NOTICE OF PUBLIC HEARING ON INTERPRETIVE RULES I - XIV FOR THE IMPLEMENTATION OF PUBLIC LAW 98-435 -- VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT

TO: All Interested Persons

1. On March 5, 1986 at 10:00 a.m., a public hearing will be held in Room 104, State Capitol Building at Helena, Montana to consider the adoption of interpretive rules to define and determine "voting accessibility for the elderly and handicapped", and to establish and maintain uniformity in the surveying of polling places, pursuant to Public Law 98-435. These rules are advisory only, but may be considered a correct interpretation of the law.

2. The proposed rules do not replace or modify any rules currently found in the Administrative Rules of Montana. The secretary of state intends to seek specific statutory authority for the adoption of substantive rules during the 1987 Legislative session.

3. The proposed rules provide as follows:

RULE I INTRODUCTION, SCOPE AND INTENT (1) Public Law 98-435 was passed by the 98th Congress to promote the fundamental right to vote by improving access for handicapped and elderly individuals to all polling places in Montana.

(2) The purpose of these rules is to establish minimum guidelines to be used in determining whether facilities used for voting in certain elections are accessible to handicapped and elderly electors pursuant to Public Law 98-435.

(3) Where accessibility is determined to be impractical or impossible, these rules will establish procedures intended to provide an alternative means of casting a ballot for elderly and handicapped electors.

(4) It is the intent of the secretary of state's office that county governing bodies and election administrators work together and proceed in good faith to develop long-range plans for achieving the most practical state of compliance possible by 1990.

(5) The title of Public Law 98-435 is the Voting Accessibility for the Elderly and Handicapped Act. For the purpose of clarity and throughout these rules, PL 98-435 shall be referred to as the Voting Accessibility Act.

(6) These rules shall only apply to elections conducted under 13-1-104(1) and 13-1-107, MCA.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE II ROLE OF SECRETARY OF STATE (1) The secretary of state is empowered under the Voting Accessibility Act and these rules to:

(a) establish guidelines that define and determine accessibility at the polling place;

(b) prescribe the forms and materials necessary to ensure uniformity in the surveying of polling places;

(c) determine what constitutes an emergency that allows an exemption from accessibility status;

(d) grant exemptions to the requirement that a polling place shall be accessible to the elderly and handicapped;

(e) establish procedures to ensure that any handicapped or elderly voter assigned to an inaccessible polling place will be provided with an alternative means for casting a ballot on election day;

(f) provide public notice, calculated to reach elderly and handicapped electors in a timely manner, of the:

(i) availability of aids under the Voting Accessibility Act;

(ii) assistance under Section 208 of the Voting Rights Act of 1965 (42 U.S.C. 1973 aa-6); and

(iii) procedures for voting by absentee ballot; and

(g) not later than December 31 of each even-numbered year, report to the Federal Election Commission, in a manner to be determined by the Commission:

(i) the number of accessible polling places in the state;

(ii) the number of inaccessible polling places; and

(iii) the reasons for each instance of inaccessibility.

(2) These are the rules adopted to establish and maintain uniformity in the implementation of the Voting Accessibility Act.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE III DEFINITIONS (1) Unless the context clearly requires otherwise, the following definitions shall apply:

(a) "Accessible" describes the combination of the various elements of the built environment as prescribed by these rules which allows unimpeded entrance to, emergence from, and use of polling place facilities by handicapped and elderly voters.

(b) "Circulation route" means a continuous path of travel from the street or parking area to the polling place

building, into and through the polling place building to the voting area, and includes both horizontal and vertical travel.

(c) "Elderly" means 65 years of age or older.

(d) "Election" means an election conducted by the authority defined in 13-1-104(1) and 13-1-107, MCA.

(e) "Exterior circulation route" means that part of a circulation route from the street or parking area to the point of entry to the polling place building.

(f) "Handicapped" means:

(i) those with impaired vision;

(ii) those with impaired hearing, and

(iii) those with impaired mobility, including wheelchair users and those who are ambulatory but who are nevertheless impaired by age, disability or disease.

(g) "Interior circulation route" means that part of a circulation route from the point of entry to the polling place building through the polling place building to the voting area.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE IV GUIDELINES FOR POLLING PLACE ACCESSIBILITY (1) To be designated as accessible to handicapped and elderly voters, a polling place must meet the following criteria, as provided by Uniform Federal Accessibility Standards:

(a) At least one existing or temporary parking place shall be designated for use by voters with disabilities or impaired mobility for each 900 electors registered to vote at that polling place. The designated parking place(s) shall be in close proximity to the accessible entrance to the building containing the polling place and shall be no less than 14 feet wide. The area surrounding the parking place(s) shall be firm, stable, and generally level, with a maximum slope in any direction of one inch in 50 inches.

(b) The exterior circulation route shall be as direct as site conditions allow and shall be free of:

(i) steps (unless ramps are provided);

(ii) abrupt changes in level exceeding 1/2 inch which could create a tripping hazard or divert the direction of the caster wheels on a wheelchair;

(iii) rough surfaces such as gravel or grass; and

(iv) any rise exceeding one inch in twelve inches of travel.

(c) Walkways, occurring at any point in the exterior circulation route, shall have:

(i) a minimum clear width of 44 inches except where it is impractical or impossible to provide the full width, in which case 36 inches is acceptable;

(ii) no abrupt edge over 1/2 inch in height;

(iii) no grating with openings larger than 1/2 inch; and

(iv) no slope in the direction of travel greater than one inch in 20 inches, unless it shall be considered a ramp and conform to the requirements of section (e) of this rule.

(d) Curb cuts shall have a clear width of 36 inches and side slopes of no more than one inch in six inches.

(e) Ramps may be used to retrofit any polling place which has steps in the circulation route but nothing herein shall be construed as a requirement for the installation of temporary ramps. Any part of a circulation path shall be considered a ramp if it has a slope that is greater than one inch rise in 20 inches of horizontal run. The following requirements apply to both existing and temporary ramps:

(i) hand rails are required on both sides of ramps which exceed a slope of one inch rise in 15 inches of horizontal run;

(ii) wheel guides of at least two inches in height shall be provided on both sides of the ramp if the ramp exceeds 10 feet in length and does not abut, on at least one side, on a wall or other structure;

(iii) ramps must have nonslip surfaces and a clear width of at least 36 inches;

(iv) ramps must be designed or positioned to provide a landing at both the top and bottom of the ramp. When a landing area is used to open a door, the landing must be at least five feet by five feet if the door opens away from the ramp, five feet by six feet if the door opens toward the ramp and five feet by 42 inches long if the door is secured in an open position during polling hours.

(f) The entrance to the building in which the polling place is located shall:

(i) be at least 32 inches of clear width with a threshold no more than 1/2 inch in height;

(ii) have a level, stable and slip-resistant surface at least 50 inches wide, at least 18 inches of which is directly adjacent to the latch side of the door unless the door is secured in an open position during polling hours, and five feet deep on both the inside and outside of the door; and

(iii) have a door that requires neither complicated hand movements, a tight grasp, nor an excessive force to open.

(g) The interior circulation route shall:

(i) be free of any obstacles or protuberances that might impede the clear movements of a visually-impaired elector;

(ii) have a clear height of 79 inches and a clear width of 36 inches; and

(iii) a floor surface that does not become slippery if wet.

(h) The polling place shall be of sufficient size to provide seating and adequate, unobstructed space for reasonable movement of elderly and disabled electors.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE V SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY (1) The election administrator shall conduct an on-site survey in each polling place facility utilized in elections conducted after December 31, 1985, except those designated as "rural", as provided in [Rule IX], to determine whether such facilities are in compliance with the criteria set forth in these rules.

(2) Unless specified otherwise, the election administrator may implement the survey procedure in 50% of the polling places in his jurisdiction 45 days prior to the 1986 June primary election and the remaining 50% of the polling places 45 days prior to the 1986 November general election.

(3) County commissioners, election judges, members of the election administrator's staff, and a Voting Accessibility Advisory Committee are encouraged to participate in the survey procedure.

(4) The survey shall be conducted in such a manner as to represent the actual path of travel an elector would take on election day.

(5) A form prescribed by the secretary of state shall be used as a checklist for each polling place surveyed. Copies of the survey shall be made available for public inspection and to the secretary of state upon request, except as provided in section 6 of this rule.

(6) If an existing polling place fails to satisfy the criteria for accessibility and cannot be permanently or temporarily altered in a reasonable manner to satisfy the criteria before the date of the election, it will either be:

(a) designated "inaccessible" and shall not be used unless an exemption is granted by the secretary of state in accordance with the provisions of [Rule VI]; or

(b) surveyed, evaluated and certified as "inaccessible but usable" by a Voting Accessibility Advisory Committee, as provided in [Rule IX].

(7) A copy of all survey forms for polling places having the designation "inaccessible but usable" and "inaccessible" shall be forwarded to the secretary of state 45 days prior to the election for which the survey was conducted, as provided in section 2 of this rule.

(8) A request for exemption form, as prescribed by the secretary of state,and defined in [Rule VI], shall be attached to the survey for those polling places designated as "inaccessible".

(9) A copy of an evaluation form as prescribed by the secretary of state, signed by the members of a Voting Accessibility Advisory Committee shall be attached to the survey for a polling place designated "inaccessible but usable."

AUTH: 2-4-201(2), 13-1-202, MCA; IMP: 13-1-202, MCA

RULE VI EXEMPTION PROCEDURE (1) If an existing polling place has been surveyed and designated as "inaccessible", the election administrator shall make a reasonable effort to seek and survey for accessibility other potential sites with comparable utility as a polling place.

(2) Nothing herein shall require an election administrator to choose an accessible polling place facility located within the jurisdiction in such a manner as to require excessive travel or other hardships for the majority of the qualified electors.

(3) If all potential polling place facilities have been surveyed and no accessible facility is available and the facilities which are available cannot reasonably be made temporarily accessible, the election administrator shall request in writing to the secretary of state that the existing polling place be exempt from the criteria set forth in these rules.

(4) A separate request for exemption shall be submitted for each polling place not in compliance. The request shall:

(i) identify the polling place for which the exemption is requested;

(ii) identify the provisions of the guidelines for accessibility with which the existing site is not in compliance;

(iii) describe the efforts made to locate a site in compliance with these rules;

(iv) describe what continuing efforts will be made to achieve compliance during the period the exemption is in effect; and

(v) bear the signature of the election administrator.

(5) Within 30 days following the receipt of a request for exemption, the secretary of state may grant a certification of exemption to the election administrator for that polling place. Such exemption, if granted, shall be valid for a period of three years from the date of issuance.

(6) If the secretary of state has reason to believe such an exemption would not be in the best interest of the majority of the affected electors, he shall deny the exemption and:

(a) report to the election administrator and the county governing body his reasons for the denial; and

(b) request that an accessible or "inaccessible but usable" polling place facility be located.

(7) A polling place designated as "rural" 45 days prior to an election, shall be exempt from the on-site survey procedure provided in [Rule VIII].

(8) If one or more disabled persons contact the election administrator or the secretary of state concerning a specific exemption, the secretary of state shall work in cooperation with the election administrator and the disabled

person(s) in locating an available facility that is accessible or providing an acceptable alternative method of voting according to the provisions in [Rule X].

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE VII EMERGENCY EXEMPTION (1) If a polling place designated "accessible" or "inaccessible but usable" becomes unavailable for reasons such as loss of lease, fire, snow or other natural disasters less than 10 days prior to an election, an emergency exists and an alternate polling place shall be selected.

(2) The alternate polling place shall be considered temporary and shall be exempt from the procedures established by these rules, except for the provisions provided by [Rules XI and XII].

(3) The alternate polling place shall not be used in the next ensuing election unless it is subject to the procedures provided in [Rules V and VI].

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE VIII POLLING PLACE DESIGNATION (1) As the result of an on-site survey, or current voter registration reports, a polling place shall be designated as:

(a) "accessible";

(b) "inaccessible";

(c) "inaccessible but usable"; or

(d) "rural".

(2) An "accessible" polling place is one that meets the criteria for accessibility as established by these rules.

(3) An "inaccessible" polling place is one that does not meet the criteria for accessibility and cannot be made accessible through practical, cost-effective methods.

(4) An "inaccessible but usable" polling place is one that does not meet all the criteria for accessibility but has been surveyed, evaluated and certified by a Voting Accessibility Advisory Committee as "usable". Such certification is cause for the secretary of state to grant that polling place an exemption. However, the secretary of state may issue an objection to the criteria used for the determination of "usability" for future elections.

(5) A "rural" polling place is one that serves 100 or less registered electors and is:

(a) granted an exemption from the criteria for accessibility by the secretary of state;

(b) subject to review 45 days prior to an election; and

(c) subject to redesignation at the time it serves more than 100 registered electors.

(6) A "rural" designation shall not be construed as cause for denying elderly or handicapped electors in that polling place the right to choose to vote by an alternative method, as provided by [Rule X].

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE IX VOTING ACCESSIBILITY ADVISORY COMMITTEE (1) An election administrator may establish one or more Voting Accessibility Advisory Committee(s) (V.A.A.C).

(2) Each committee shall consist of a minimum of three members, two of which shall represent an organization of elderly persons or an organization of disabled persons.

(3) The committee may assist in surveying polling places for compliance with accessibility guidelines.

(4) The committee has sole authority to evaluate and certify a polling place as "inaccessible but usable."

(5) The election administrator shall provide the secretary of state with a list of the members of each Voting Accessibility Advisory Committee, including addresses and telephone numbers.

(6) Each member of the committee may be compensated for the number of hours worked and reimbursed for actual travel expenses incurred while participating in the conduct of an on-site survey.

(7) The election administrator may pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided by 13-4-106(1), MCA.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE X ALTERNATIVE MEANS FOR CASTING BALLOT (1) The election administrator shall provide an alternative method of voting for those electors who are unable, because of a physical handicap, to access their regular polling place. Those methods are limited to the following:

(a) the practice, commonly referred to as "curbside voting", as provided by 13-13-118, MCA;

(b) absentee balloting, as provided by 13-13-222, MCA; and

(c) prearranged assignment to an accessible polling place within the county. An elector, prevented from voting at his own polling place on election day because it has been exempt from meeting the accessibility criteria set forth in these rules, shall:

(i) notify the election administrator, in writing by 5:00 p.m. on the Friday preceding the election, of his desire to vote on election day at an accessible polling place;

(ii) be assigned to the nearest ~~accessible~~ polling place for the purpose of voting in that election;

(iii) sign his name on a special addendum to the official precinct register, as required by 13-2-601, MCA; and

(iv) receive the same ballot to which he is otherwise entitled.

(v) For the purposes of this part, the ballot shall be processed and counted in the same manner as an absentee ballot.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE XI THE ELDERLY ELECTOR (1) The Voting Accessibility Act defines "elderly" as 65 years of age or older.

(2) The following requirements are intended to benefit elderly electors and shall be implemented by the 1986 June primary election:

(a) Election administrators shall conspicuously display instructions for voting, printed in 18 point type, or larger, at each polling place for every election and instructions for registering at each permanent registration facility.

(b) Each polling place shall have a desk, table, or other surface no more than 36 inches in height, with room to accommodate a chair or a wheelchair to permit feeble or mobility-impaired electors to vote in a seated position. Adequate privacy shall be provided to ensure the seated elector the same degree of ballot secrecy enjoyed by other electors.

(c) In all polling places in which a stylus is used to mark voting device ballots, at least one stylus shall have a large, easily graspable handle. At least one pen or pencil in each polling place shall be over-sized and easily graspable.

(d) Extra seating shall be provided for elderly electors to rest while waiting their turn to vote. Election judges shall ensure that the seating is available for those for whom it is intended.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE XII THE VISUALLY IMPAIRED (1) Visually impaired persons can range from those with slight visual problems, not correctable by normal means, to the totally blind. In addition to the large-type printing requirements, as provided by [Rule XI, Section 2(a)], requirements and suggestions for the visually impaired electors include the following:

(a) adequate lighting shall be provided in both the voting booth and the polling place;

(b) a magnifying glass may be provided in those polling places where the election administrator's common knowledge indicates a need; and

(c) a plastic or cardboard card with a space cut out for a signature may be provided as a guide for signing a precinct register.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE XIII TELECOMMUNICATIONS DEVICE FOR THE HEARING IMPAIRED (1) Sixty days prior to each election, the secretary of state shall install and advertise access to a toll-free telecommunications device for the deaf (TDD) for the purpose of providing:

(i) information on registration;

(ii) voting aids available for the handicapped;

(iii) assistance under Section 208 of the Voting Rights Act of 1965; and

(iv) procedures for voting by absentee ballot.

(2) Election administrators shall clearly post the secretary of state's TDD number, and advertise it wherever possible, for 60 days prior to each election.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

RULE XIV COMPLAINTS (1) Within five working days following the receipt of a written notification from the United State's Attorney General or a person who is personally aggrieved by the non-compliance of his polling place with the Voting Accessibility Act and these rules, the secretary of state shall transmit a copy of the notification to the appropriate election administrator.

(2) Upon receipt of the notification, the election administrator shall forward to the secretary of state a copy of the survey form concerning the polling place in question.

(3) Within 30 days of receipt of the notification, the secretary of state shall cause an independent survey of the polling place to be conducted. A report of that survey shall be provided to the complainant and the election administrator.

(4) If the complainant requests, in writing, that further action be taken, the secretary of state shall call for a hearing in which the complainant, election administrator, representatives of the county governing body, affected groups and his office are represented.

(a) The purpose of the hearing is to show just cause why the particular polling place facility should be:

(i) denied exemption from meeting the criteria established for accessibility by these rules;

(ii) denied an "accessible" rating; or

(iii) declared unacceptable for use as a polling place facility and no longer utilized for that purpose.

AUTH: 13-1-202, MCA; IMP: 13-1-202, MCA

4. These rules are being proposed to establish and maintain uniformity in regard to the procedures, forms and materials to be used in the implementation of the Voting Accessibility Act.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bobby June Day, Room 225, Capitol Building, Helena, Montana 59620, no later than March 13, 1986.

6. Bobby June Day, Room 225, Capitol Building, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority and implementing sections are listed at the end of each proposed rule.

Dated this 3rd day of February, 1986.

Jim Waltermire
Secretary of State

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

In the matter of the amendment of Rules 46.10.318 and 46.10.319 pertaining to AFDC emergency assistance	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.10.318 AND 46.10.319 PERTAINING TO AFDC EMERGENCY ASSISTANCE

TO: All Interested Persons

1. On March 11, 1986, at 9:30 a.m., a public hearing will be held in Room 107 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.10.318 and 46.10.319 pertaining to AFDC emergency assistance.

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

46.10.318 EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH DEPENDENT CHILDREN ~~(1)--Emergency assistance may consist of money payments, payments in kind, food, clothing, shelter, utilities, and medical services limited to the amount, scope and duration of the medicaid program.~~

~~(2)--Emergency needs will be met either through the issuance of cash warrant or disbursing orders.--Emergency assistance is limited to one period not to exceed 30 consecutive days in any 12 consecutive months.~~

(1) For purposes of this chapter, "emergency assistance" means aid, care and services authorized to meet the emergency needs of a child under 21 or the household in which he is living in the following circumstances:

(a) where such emergency arises from a disaster such as a fire, flood, earthquake, violent storm or drought, civil disorder, illness, accident or death, eviction, utility cut-off, travel emergency, or from the breakdown of necessary food storage or food preparation appliances, which has caused or threatens to cause the destitution of the child and/or the household;

(b) where such emergency needs did not arise because such child or caretaker relative refused without good cause to accept employment or training for employment;

(c) where such emergency situation could not have been foreseen by the applicant and was not under his control; and

(d) where other resources, including public assistance benefits or services, have been exhausted.

(2) Emergency assistance is limited to one period not to exceed 30 consecutive days in any 12 consecutive months.

(3) Payment for shelter and utilities will be limited to the two (2) most recent months of arrearages. An eviction notice or final utility cut-off notice will be required before emergency assistance will be granted.

(4) Emergency assistance shall be provided as follows:

(a) Medical assistance shall be limited to the amount, scope and duration of services provided under the Medicaid program. The services shall be provided through vendor payments.

(b) Food and clothing distributions will be made in lieu of money or county disbursing orders whenever possible. Vendor payments or cash payments will be used when necessary.

(c) Shelter and utilities payments will be made by vendor payment.

(d) Other emergency needs, such as replacement of necessary appliances, furniture, bedding and other necessary household equipment may be supplied through vendor payments or cash payments.

(e) If available, social services will be provided on an as-needed basis upon the request of the recipient for information, referral to other agencies, counseling, securing family shelter, child care, legal services, homemaker service, and other service needs that arise from the emergency or crisis situation.

(f) Cash payments shall be paid directly to the recipient unless there is a protective payee.

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

46.10.319 EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH DEPENDENT CHILDREN, PROCEDURES FOLLOWED IN DETERMINING ELIGIBILITY (1) ~~The~~ A person seeking emergency assistance shall ~~make~~ application at the county ~~welfare department~~ office where he lives.

(2) Eligibility requirements for emergency assistance must be verified and documented.

(3) To receive emergency assistance, an applicant ~~the child~~ must ~~be~~ show:

(a) that a child under the age of 21 is living with, or within six (6) months prior to the application did live with, a ~~specified~~ relative specified in ARM 46.10.302(1) in a place of residence maintained by the relative, as the child's own home;

(b) ~~without resources immediately available to meet his needs;~~ that the circumstances listed in ARM 46.10.318(1) have been met.

~~(c) less than 19 years old and, if between the ages of 16 and 19 years and not attending school must agree to accept training or employment.~~

~~(4) A child is not eligible for emergency assistance if his caretaker relative refuses without good cause to accept employment or training for employment. Participation in a strike is not good cause for refusing to accept employment or training for employment. Nothing in this section shall be~~

~~interpreted--to-require-any-person--enrolled-in--and-attending school--regularly-to-accept-employment-or-training-as-a-condition-of-receiving-emergency-assistance.~~

(54) Emergency assistance may be used in addition to but not as a substitute for categorical assistance. ~~or--general assistance.~~ Emergency assistance may be extended to those ~~aid to~~ families with dependent children ~~families~~ on a supplementary basis who have specified needs arising from an emergency situation.

(65) The completed application is submitted to the county ~~welfare-board-who~~ office which shall notify the person of approval or reasons for disapproval of his application.

~~(7)--The--assistance--payment--is--mailed--directly--to the-client-except-in-protective-payee-or-vender-payments.~~

(86) There are no residency requirements for emergency assistance. Migrants and transients who otherwise meet the requirements of this part are eligible for emergency assistance.

(7) County offices shall give priority to applications for emergency assistance.

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

3. These rules are being revised to clarify the department's policies on emergency assistance to effect greater uniformity in the awarding of emergency assistance grants. To this end, the amended rules define the emergency situations covered and the means by which assistance will be provided. The amended rules limit payments for utilities and/or rent arrearages to two months.

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 March 13, 1986.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State February 3, 1986.

BEFORE THE STATE AUDITOR AND
COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to discrimination in insurance and retirement plans	)))	NOTICE OF ADOPTION OF RULES ARM 6.6.2101 THROUGH 6.6.2104

To: All Interested Persons

1. On August 15, 1985, the Montana Human Rights Commission and the State Auditor and Commissioner of Insurance jointly published notice of proposed adoption of rules implemention Section 49-2-309, MCA, relating to discrimination in insurance and retirement plans at page 1049-1054 of the 1985 Montana Administrative Register, issue number 15.

2. The Insurance Commissioner has adopted the rules with the following changes:

RULE I 6.6.2101 DEFINITIONS (1) The term "insurer" as used in ~~these rules includes the definition of insurer found in section 33-1-201(6), MCA, the definition of financial institution found in section 49-2-101(10), MCA, and the 49-2-101, MCA~~ this sub-chapter means any financial institution or person, as those terms are defined in section 49-2-101, MCA, that issues, operates, sells or otherwise provides any type of insurance policy, plan, or coverage or any pension or retirement plan, program, or coverage to another person or persons, except that an employer or organization which provides to its employees or members a group insurance policy, plan, or coverage or pension or retirement plan, program, or coverage purchased from or provided by an insurer is not an insurer.

~~(2)~~ Deleted in its entirety.

AUTH: 33-1-313, MCA IMP 49-2-309, MCA

RULE II 6.6.2102 RATES OR AND PREMIUMS; PROPERTY AND CASUALTY INSURANCE (1) Rates or premiums for any property or casualty insurance policy, plan, or coverage on a risk, when the risk is resident, located, or to be performed in the State of Montana shall not be based on sex or marital status.

(2) Factors which an insurer may ~~be taken~~ take into account to determine rates or premiums for motor vehicle liability and property coverage include, but are not limited to:

(a) The age of the driver.

(b) The length of driving experience.

(c) The number of years licensed to operate a motor vehicle.

(d) A determination of which driver, among several insured individuals, is the primary driver of a covered vehicle, based upon the proportionate use of each vehicle

insured under the policy by individual drivers insured or to be insured under the policy.

(e) Average number of miles driven over a period of time.

(f) Type of use, such as business, farm, or pleasure use.

(g) Vehicle characteristics, features, and options such as engine displacement, ability of vehicle and its equipment to protect passengers from injury, vehicle make and model, and design characteristics related to damagability of the vehicle.

(h) Commuting mileage over a period of time.

(i) The number of cars insured or number of licensed operators in the household, without regard to the sex or marital status of the licensed operators. An insurer may not utilize a policy of establishing insurance rates for an individual based upon the driving record of a spouse who is a licensed operator but not a primary driver of the vehicle to be insured unless the policy is applied in the same manner to households of individuals not married to each other.

(j) The amount of insurance.

~~(k)--The-income-of-the-insured;~~

~~(l)~~ (k) The anticipated cost of vehicle repairs or replacement, which may be measured by age, price, cost, or value of the insured automobile, and other related factors.

~~(m)~~ (l) Geographic location.

~~(n)~~ (m) The accident record of the insured, including accidents for which the insured, although not cited, was substantially at fault.

~~(o)~~ (n) The driving record of the insured, including citations.

~~(4)~~ Deleted in its entirety.

~~(5)~~ Deleted in its entirety.

~~(6)~~ Deleted in its entirety.

AUTH: 33-1-313, MCA IMP: 49-2-309, MCA

~~RULE-III~~ 6.6.2103 PAYMENTS OR BENEFITS (1) No payments or benefits of any insurance policy, plan or coverage or pension or retirement plan, program, or coverage shall be based on sex or marital status.

~~(2)~~ Deleted in its entirety.

AUTH: 33-1-313, MCA IMP: 49-2-309, MCA

~~RULE-IV-AND-RULE-V~~ 6.6.2104 JURISDICTION AND APPLICABILITY DATE (1) Section 49-2-309, MCA, and this sub-chapter are applicable to all insurance policies plans, and coverages and pension or retirement plans, programs or coverages subject to the laws of Montana and issued or entered into on or after October 1, 1985. ~~shall-not-discriminate-in-issuance-on-the basis-of-sex-or-marital-and-any-payments-or-benefits-provided by-such-policies,-plans,-programs-or-coverages-shall-be-provided-without-discrimination-on-the-basis-of-sex-or-marital status.~~

(2) Any term, payment, or benefit of an insurance

policy, plan, or coverage or pension or retirement plan, program or coverage in effect prior to October 1, 1985, may be exercised in accordance with the terms of that policy, plan, program, or coverage. Options to increase or decrease coverage, annual rate adjustments ~~(as opposed to annual renewals)~~, and settlement options in life insurance policies are examples of terms which if included in a policy, plan, program or coverage in effect prior to October 1, 1985, may be exercised without regard to Section 49-2-309, MCA, or these rules.

~~(3)~~ Deleted in its entirety.

(4) Section 49-2-309, MCA, and these rules, are applicable to any ~~new certificate issued under any group insurance policy, plan or coverage or group retirement plan, program or coverage on or after October 1, 1985.~~ agreement whereby an insurer and an insured agree to an extension or continuation of a pre-October 1, 1985 insurance policy plan or coverage when no consideration was given in the pre-October 1, contract for the right to extend or continue upon the same terms. The fact that the contract formed by extension or continuation is identical to the pre-October 1, 1985 contract is not material if no consideration for the right to extend or continue the pre-October 1 terms was given.

~~(1)~~(5) Section 49-2-309, MCA, and these rules do not apply to any insurance policy, plan, or coverage or pension or retirement plan, program or coverage issued to or provided to a person who resided in a state other than Montana at the time the policy, plan, program or coverage became effective. ~~Section 49-2-309, MCA, and these rules, apply to any insurance policy, plan, or coverage or retirement plan, program or coverage renewed by a person who resides in Montana, regardless of the place of issuance.~~

~~(2)~~ Deleted in its entirety.

~~(3)~~ Deleted in its entirety.

~~(4)~~ Deleted in its entirety.

AUTH: 33-1-313, MCA IMP: 49-2-309, MCA

RULE VI. Not adopted.

(3) The Insurance Commissioner received written comments and testimony at the hearing both in support of the proposed rules and in opposition to the proposed rules. The Insurance Commissioner has reviewed the rules adopted by the Human Rights Commission and has attempted to conform these rules to those adopted by the Commission to avoid unnecessary confusion. The comments, and the Insurance Commissioner's responses to them, are summarized as follows:

(a) Several commenters objected to the definition of "renewal" contained in proposed rule I and its use in the rules, contending that the definition was confusing and inconsistent with the manner in which the term is used in the insurance industry. The Insurance Commissioner agrees with these comments and deleted the definition of renewal and its use in the rules as adopted. The Insurance Commissioner agrees with the Human Rights Commission and incorporates the deleted definition of renewal in 6.6.2104(4) as it is

necessary to explain the purpose of this rule.

(b) Several commenters objected to the use of the term "risk" with respect to disability and health insurance because that term is not customarily used for these types of insurance and could cause confusion. The Insurance Commissioner agrees with these comments. The addition of the phrase "property and casualty" in Rule II (6.6.2106) limits its applicability to those types of insurance where the term "risk" is customarily used.

(c) The Women's Lobbyist Fund objected to the inclusion of the income of the insured as a permissible factor in establishing insurance rates and premiums on the ground that income can act as a surrogate for gender. The Insurance Commissioner defers to the Human Rights Commission which agreed to this change. The Human Rights Commission deleted this factor from the rules as adopted, reasoning that because the list of factors is permissive, an insurer would not be prohibited from utilizing income as a factor. A person who believes the use of income to be discriminatory on the basis of sex in setting of his or her insurance premiums may file a complaint the with the Human Rights Commission and the issue can be resolved in a contested case proceeding.

(d) Glen Drake, representing the American Insurance Associaiton recommended adding the language "where the car is garaged" to the portion of the rule which permits the use of geographic location as a factor in establishing rates for motor vehicle liability and property coverage. The Insurance Commissioner joins the Human Rights Commission in rejecting this suggestion. The present language does not preclude the use of the location where the car is garaged as a factor and affords more flexibility by permitting the use of other locations as well.

(e) The National Orgnization for Women (NOW) and its Montana Chapter recommended the adoption of a prohibition on flat-rate pricing for automobile insurance that ignores mileage currently in use by the automobile insurance industry. NOW contends that actual mileage is the best predictor of risk of accident and that facially neutral flat rates are discriminatory against women as a class because women tend to be low mileage drivers. The Insurance Commissioner joins the Human Rights Commission in rejecting this suggestion. At this time there is not the accurate data base to allow actual mileage to be used as the only predictor of risk. Any correlation between mileage driven and sex of the driver should be determined by the Human Rights Commission in a contested case proceeding.

(f) There were numerous comments received concerning the application of the proposed rules relating to rates charged by life and disability insurers. This also includes comments by health service corporations as to the applicability of the rules to their programs. Because of statutory prohibitions against reviewing premium rates of life and disability insurance (Section 33-16-103, MCA), the Insurance Commissioner has deleted all proposed rules in conflict with the statute. Likewise all rules conflicting with Section 33-30-306, MCA, which prohibits review of rates

of health service corporations have been deleted. Specifically the proposed rules which have been deleted in response are as follows: Rule II (4), (5), (6) and Rule III (2).

The Insurance Commissioner adopts the position that under the current statutory scheme, all questions involving claims of discrimination in premiums charged and benefits paid can only be resolved by the Human Rights Commission.

(g) The Montana Chapter of NOW recommended that the practice of offering "no-smoker" discounts to pipe and cigar smokers should be prohibited as sex discriminatory. The Human Rights Commission rejected this suggestion by leaving any determination to a contested proceeding. The Insurance Commissioner adopts the position of the Human Rights Commission and rejects this comment.

(h) Several organizations recommended the inclusion of a rule clarifying that pregnancy discrimination constitutes sex discrimination. The Insurance Commissioner declines to include such a rule. This is an area of sex discrimination under the jurisdiction of the Human Rights Commission.

(i) Don LaBar on behalf of Blue Cross of Montana argued that the proposed rules go beyond the scope and intent of the statute in that they ignore the term "solely". This argument if accepted would result in Section 49-2-309, MCA, having no meaning whatsoever. The Insurance Commissioner rejects this argument. The Human Rights Commission also rejected this comment and the Insurance Commissioner joins in its reply.

(j) The rules as proposed required that all insurers file their rates with the Insurance Commissioner's office. A number of life and health insurers objected to this requirement. The Insurance Commissioner has authority to require filing of property and casualty rates. The Insurance Code does not require life and health rate filings. The Insurance Commissioner accepts the argument and has deleted the filing requirements for life and disability insurers and for health service corporations. All insurers will still be required to file according to the appropriate statutory guidelines set forth in the Insurance Code.

(k) Several commenters argued that proposed Rule IV(4) resulted in extra-territorial application of the statute and application of the statute to policies in effect prior to October 1, 1985. These commenters contended that neither of these effects were intended by the legislature. The Insurance Commissioner accepts these comments by deleting proposed Rule IV(2), (3), (4).

(l) Several commenters objected to what they characterized as an effort to give extra-territorial application to the statute contained in proposed rule V. The Insurance Commissioner has deleted all of that proposed rule, except for the first sentence of Rule V(1), in response to this comment.

(m) A number of commenters objected to proposed rules II(5) and III(2) on the grounds that they were vague and unenforceable, exceed statutory authority, are excessively burdensome, and are in conflict with other state laws. Because of these problems and the fact the Human Rights

Commission will seek further clarification, the Insurance Commissioner has deleted them.

(n) Edward Zimmerman of the American Council of Life Insurance recommended that language be added to the rules to indicate that an insurer may consider the make-up of a group in establishing funding requirements for a policy issued for that group. The Insurance Commissioner rejects this recommendation. The question presented is one for the Human Rights Commission to decide and that body has indicated its intention to do so.

(o) Don LaBar on behalf of Blue Cross of Montana objected to the use of the term "insurer" since it is not included in the statute. The Insurance Commissioner rejects this argument. The term "insurer" was included as a defined term so it could be used in the rules for purposes of simplification. The definition however has been redrafted for purposes of clarification by the Human Rights Commission and the Insurance Commissioner adopts the same.

(p) The Insurance Commissioner also deletes Rule VI to conform these rules to those adopted by the Human Rights Commission.

4. The authority for the rules is based on Section 33-1-313, MCA, and the rules implement Section 49-2-309, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State February 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ATHLETICS

In the matter of the amendments of 8.8.2802 concerning definitions and 8.8.2803 concerning prohibitions	)))	NOTICE OF AMENDMENTS OF 8.8.2802 DEFINITIONS and 8.8.2803 PROHIBITIONS

TO: All Interested Persons:

1. On December 27, 1985, the Board of Athletics published a notice of amendments of the above-stated rules at page 1945, 1985 Montana Administrative Register, issue number 24.

2. The board has amended 8.8.2802 (6) as proposed with the following changes:

"8.8.2802 DEFINITIONS (6) 'Mud Wrestling' is interpreted by the board to include wrestling in jello, natural dirt and water, polyurethene, synthetic, or other unnatural or foreign substances. This rule is advisory only.
Auth: 23-3-405, MCA Imp: 23-4-404, 405, MCA

3. The board amended 8.8.2803 exactly as proposed.

4. Comments were received by the Legislative Council that the authority and implementation sections were incorrect on 8.8.2802 and the authority section was incorrect on 8.8.2803. They also commented that 8.8.2802 should state that the rule is advisory only. The board concurs and the changes have been made.

5. No other comments or testimony were received.

BOARD OF ATHLETICS
JOHN R. HALSETH, M.D.
CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, February 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the amendment of 8.12.601 concerning applications, education requirements and a new rule concerning hair analysis	NOTICE OF AMENDMENT OF 8.12.601 CONCERNING APPLICATIONS, EDUCATION REQUIREMENTS AND A NEW RULE CONCERNING HAIR ANALYSIS

TO: All Interested Persons:

1. On December 13, 1985, the Board of Chiropractors published a notice of amendment and adoption of the above-stated rules at pages 1905 through 1906, 1985 Montana Administrative Register, issue number 23.

2. The board has amended rule 8.12.601 exactly as proposed.

3. The board has voted not to adopt new Rule I, Hair Analysis.

4. No comments or testimony were received.

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

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, February 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HEARING AID DISPENSERS

In the matter of the amendments of 8.20.401 traineeship requirement and standards, 8.20.402 fees, 8.20.403 examination, 8.20.404 renewals, 8.20.405 address change, 8.20.408 code of ethics, 8.20.410 hearings, and adoption of new rules under sub-chapter 4 disciplinary actions - fines, purchaser recision rights and adoption of new rules under sub-chapter 5 continuing education	NOTICE OF AMENDMENTS AND ADOPTION OF NEW RULES UNDER SUB-CHAPTER 4 and NEW SUB-CHAPTER 5 CONCERNING CONTINUING EDUCATION

TO: All Interested Persons:

1. On November 30, 1985, the Board of Hearing Aid Dispensers published a notice of amendments and adoption of the above-stated rules at pages 1822 through 1831, 1985 Montana Administrative Register, issue number 22.

2. A public hearing was held concerning the proposed amendments and adoption of the above-stated rules on January 8, 1986, at 10:00 a.m., in the downstairs conference room of the Department of Commerce at 1424 9th Avenue, Helena, Montana. The written and oral comments and testimony are noted below.

3. The board has amended Rule 8.20.401 as proposed with the following changes.

"8.20.401 TRAINEESHIP REQUIREMENT AND STANDARDS (1) The traineeship period shall be for 12 months beginning upon notification of successfully passing the written examination.

(a) The trainee shall work for 60 days ~~in~~ under the ~~physical presence~~ direct supervision of a licensed hearing aid dispenser ~~(spenser)~~.

(b) and (c) have been deleted in their entirety.

(2) ~~Supervision of trainee.~~ The dispenser ~~(spenser)~~ (supervisor) will:

(a) peruse every fitting made by the trainee. The ~~spenser~~ supervisor shall approve the selection of the ear mold, aid and choice of ear to fit.

(b) has been deleted in its entirety.

~~(c)~~ (b) The dispenser shall have personal contact with all customers of the trainee who experience difficulty in fitting.

~~(d)~~ (c) The number of trainees shall be limited to no more than two trainees for each licensed dispenser at any given time.

(3) Both the trainee and the ~~spenser~~ supervisor must notify the board in writing, of any break in training program, stating reasons for such break in training or termination.

(4) A trainee who loses his or her ~~spenser~~ supervisor for any reason shall not continue in a trainee status with a new ~~spenser~~ supervisor until written notification is received by the board, within 10 days of change, stating the reasons for such change in ~~spenser~~ supervisor.

(5) A ~~spenser~~ supervisor of a trainee who desires to terminate his or her supervisory responsibility~~of spensership~~ shall give the trainee written notice of such termination, giving reasons, and shall immediately notify the board, in writing, of such termination of ~~spensership~~ supervisory responsibility.

(6) When there is any break in a training program lasting more than ~~30 days~~ six months, the trainee status terminates and the trainee must make new application for original trainee status and pay fees as required.

(7) has been deleted in its entirety.

~~(8)~~ (7) Trainees shall affix the designation "trainee" after his or her name on all business cards, correspondence, advertising or any written material concerning the hearing aid field."

Auth: 37-16-202, MCA; AUTH Extension, Sec. 11, Ch. 404, L. 1985 Imp: 37-16-301, 405 MCA

4. The board has voted to not take any action on 8.20.402 at this time.

5. The board has adopted 8.20.403 through 8.20.410 as proposed.

6. The board has adopted new Rule I (8.20.411) Disciplinary Actions - Fines as proposed with the following changes:

"I (8.20.411) DISCIPLINARY ACTIONS - FINES (1) (a) and (b) will remain the same as proposed.

(c) ~~past or pending~~ disciplinary actions relating to the licensee.

(2) and (2) (a) will remain the same as proposed.

(2) (b) has been deleted in its entirety.

~~(e)~~ (b) suspension of the right to practice for a period not exceeding 1 year;

~~(d)~~ (c) placing a licensee on probation;

~~(e)~~ (d) public or private reprimand or censure of a licensee;

~~(f)~~ (e) limitation or restriction of the scope of the license and the licensee's practice;

~~(g)~~ (f) deferral of disciplinary proceedings or imposition of disciplinary sanctions;

~~(h)~~ (g) ordering the licensee to successfully complete appropriate professional training; or

~~(j)~~ (h) imposition of a fine or fines not to exceed $500 per incident of violation.

(i) and (ii) will remain the same as proposed.

(iii) failure to pay the fine and assessments for violation(s) may result in non-renewal of license. ~~or an additional 10% of the amount of fine assessment for each month that the fine is not paid.~~

(iv) has been deleted in its entirety.

(3) has been adopted as proposed."

Auth: 37-1-136, 37-16-202, MCA Imp: 37-16-411, MCA

7. The board has voted to not adopt new Rule II Purchaser Recision Rights.

8. The board has adopted new Rule III (8.20.501) Continuing Education Requirements exactly as proposed.

9. The board has adopted new Rule IV (8.20.502) Standards for Approval as proposed with the following changes:

"IV. (8.20.502) STANDARDS FOR APPROVAL (1) through (4) will remain the same as proposed.

(5) Instructors shall be qualified to teach the specified course content by virtue of their prior education, training, and experience. A resume of each instructor's qualifications shall be forwarded with the application ~~for approval 30 days prior to the occurrence of the course~~.

(6) and (7) will remain the same as proposed."

Auth: 37-16-202, MCA; AUTH Extension, Sec. 13, Ch. 404, L. 1985 Imp: 37-16-407, MCA

10. The board has adopted new Rules V (8.20.503) and VI (8.20.504) exactly as proposed.

11. The board has thoroughly considered all oral and written comments received.

COMMENT: 8.20.401 (a) through (c) and (2) (a) through (c) Comments were received that the statute adequately provided for period of time to trainee and that training should be under direct supervision of licensed hearing aid dispenser.

RESPONSE: The board concurs and has incorporated the suggestions.

COMMENT: 8.20.401 (6) Comments made that 30 days was not long enough due to emergency, six months recommended.

RESPONSE: Board concurs and has increased break in training program to six months.

COMMENT: New Rule I (8.20.411) (h) (iii) Licensees, presiding officer and Legislative Council staff commented that language deleted may be an improper extension of authority.

RESPONSE: Board concurs and has deleted improper language.

COMMENT: New Rule IV (8.20.502) (5) In acquiring instructors to come to Montana, it was felt that 30 days prior approval placed a hardship on licensees to meet this requirement.

RESPONSE: Board concurs and incorporated change.

COMMENT: Legislative Council staff recommended adding Authority Extensions missed in original Notice of Proposed Amendments to rules 8.20.403, 404, 405, and new Rules III (8.20.501), IV (8.20.502), V (8.20.503) and VI (8.20.504).

RESPONSE: Board concurs, Authority Extensions listed on adoption.

12. No other comments or testimony were received.

BOARD OF HEARING AID
DISPENSERS
DUDLEY ANDERSON
CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, February 3, 1986.

VOLUME NO. 41 OPINION NO. 41

COUNTIES - Share of costs for local road improvement;
COUNTY COMMISSIONERS - Creation of local improvement district for county road;
HIGHWAYS - Procedure for creation of local improvement district for county road;
SPECIAL IMPROVEMENT DISTRICTS - Creation of local improvement district for county road;
MONTANA CODE ANNOTATED - Title 7, chapter 14, part 27, sections 7-6-2318, 7-14-2124, 7-14-2501, 7-14-2513, 7-14-2601, 7-14-2603.

HELD: 1. The board of county commissioners is required to pass a resolution of public interest upon receipt of a proper petition, under section 7-14-2702, MCA, requesting the creation of a local improvement district for a county road. The board may not hold a hearing for the purpose of making an independent determination of the public interest.

2. The board may not refuse to create a local improvement district which has been properly petitioned where the requirements of section 7-14-2710(1), MCA, are met.

3. The county's share of the costs of the improvement may be paid either from the county road fund or from the general fund.

4. Pursuant to section 7-14-2714, MCA, the county may construct or improve the road and thereby meet its share of the costs by providing in-kind services. Otherwise, the county's share must be paid from county funds in accordance with section 7-14-2733, MCA.

22 January 1986

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

Dear Mr. Hanser:

You have requested my opinion on the following questions concerning local improvement districts for county roads:

1. Upon receipt of a petition as provided in section 7-14-2702, MCA, for opening or improving a county road, is the board of county commissioners required to pass the resolution of public interest provided in section 7-14-2704, MCA, without holding a hearing and without making an independent determination of public interest?

2. May the board of county commissioners refuse to create a local improvement district if the county does not have sufficient funds for its portion of the costs?

3. Is the county's share of the costs to be paid from the county road fund or the general fund?

4. May the county meet its share of the costs by providing in-kind services, such as furnishing gravel and signs?

Title 7, chapter 14, part 27, MCA, sets forth the procedure for creation of local improvement districts for the purpose of laying out, opening, constructing, or improving county roads. Owners of land fronting on the road and residents of the proposed district may petition the board of county commissioners for the improvement. § 7-14-2702, MCA.

Section 7-14-2704(1), MCA, then provides:

> Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing, or improving of the road or part thereof described in the resolution. [Emphasis added.]

The word "shall" is generally interpreted as mandatory except where the intent and purpose of the Legislature are plain and unambiguous and clearly signify a contrary

construction. State ex rel. McCabe v. District Court, 106 Mont. 272, 76 P.2d 634, 637 (1938). I have concluded that the language of section 7-14-2704, MCA, does not grant discretion to the board to make an independent determination of public interest prior to passing the resolution and that no hearing on the proposed improvements is necessary. See also State ex rel. Palmer v. Hart, ___ Mont. ___, 655 P.2d 965, 968 (1982).

In 1965 the Legislature revised and recodified the highway code, including the statutes pertaining to the creation of local improvement districts. Although the Legislature adopted a statement of legislative policy and intent (§ 60-1-102, MCA) and rewrote other statutes (§§ 7-14-2101 to 2102, MCA) which indicate that county officials have been vested with broad authority and discretion in county road matters, the Legislature also retained the substance of the local improvement district status.

It is clear from the plain meaning of section 7-14-2704, MCA, as well as its predecessor statutes, that the Legislature has limited the usual discretion of the board and has required the resolution of public interest to be passed upon receipt of the petition and without further investigation by the board. Cf. § 7-14-2603, MCA. It should be noted that the resolution of public interest is a distinct act and precedes the order that the improvement shall be made. See § 7-14-2710, MCA; 70 Am. Jur. 2d Special or Local Assessments § 123.

Following passage of the resolution, the board is required to schedule and give notice of a meeting of the county road superintendent, the owners of land to be included within the district, and the residents of the proposed district, §§ 7-14-2705 to 2706, MCA. At the meeting, a committee of supervisors is elected. § 7-14-2707, MCA. After the road superintendent, with the assistance of the committee, has prepared plans (including a description of the proposed local assessment district) and estimates of the damages, costs, and expenses, he must submit a report to the board at the board's next annual meeting. § 7-14-2709, MCA. Section 7-14-2710(1), MCA, then provides:

> If the whole amount of damages, costs, and expenses shall not exceed 135% of the total

> taxable value of the parcels of land in the district as determined from the last annual assessment roll of the county, the board shall make and enter upon the report an order that the road be made.

Subsection (2) further provides that the order "shall create" the local improvement district.

Again, the statutory language is mandatory. Creation of the district is not subject to availability of funds or any condition other than the requirement that costs not exceed 135 percent of taxable value. The Legislature has not given discretion to the board to refuse to create a local improvement district when this threshold requirement has been satisfied.

By contrast, the board does have discretion to deny a petition filed pursuant to section 7-14-2601, MCA. See § 7-14-2603, MCA; Ingram-Clevenger, Inc. v. Lewis and Clark County, ___ Mont. ___, 636 P.2d 1372 (1981). But the county must bear the entire cost of improvements which are petitioned under section 7-14-2601, MCA, and the board is required to take immediate steps if it decides to grant the petition (see § 7-14-2605, MCA). Under the local improvement district statutes, however, the district pays for up to 75 percent of the cost of the improvement, and the board need not order the improvement or create the district until its annual meeting, at which time the county's share of the cost may be considered by the board in estimating expenditures for the next year and preparing the county budget.

Section 7-14-2702, MCA, requires the petition to set forth the portion of the costs which the district, if formed, will assume and pay. Section 7-14-2703, MCA, states that the district's portion of the costs must not be less than 35 percent and may be as much as 75 percent of the costs. Section 7-14-2733, MCA, then provides:

> Sharing of road costs with county. (1) The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made specifying the amount to be paid by the district and the amount to be paid from county

> funds, the board shall make an order to that effect on the records of its proceedings.
>
> (2) The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed 65% of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants, duly drawn, as ordered by the board.

The Legislature has required the county to share the road costs by paying at least 25 percent of the costs and has permitted the county to agree to pay up to 65 percent of the costs; within these limitations the board must determine the proportion of costs to be borne by the county. It is not bound by the proposals set forth in the petition. Although section 7-14-2733, MCA, does not specify from which county fund the share of the county is to be paid, I have concluded that the board may use the county road fund for this purpose. See §§ 7-14-2501, 7-14-2513, MCA. However, the board is not precluded by statute from specifying the general fund as the fund against which warrants are to be drawn for the share of the county. See § 7-6-2318, MCA.

I can find no express statutory authority for permitting the county to pay its share of the costs by providing in-kind services. However, section 7-14-2714, MCA, allows the district to contract with the board to construct or improve the road in the event that the local committee of supervisors rejects the bids of private contractors. The county may then take the place of a private contractor and may furnish materials and services for part or all of the improvement project. If the committee awards the contract to a private contractor, then the county's share must be paid from county funds pursuant to section 7-14-2733, MCA. Of course, the county may agree with the private contractor to sell crushed rock or gravel for use by the contractor. See § 7-14-2124, MCA.

THEREFORE, IT IS MY OPINION:

1. The board of county commissioners is required to pass a resolution of public interest upon receipt of a proper petition, under section 7-14-2702, MCA, requesting the creation of a

local improvement district for a county road. The board may not hold a hearing for the purpose of making an independent determination of the public interest.

2. The board may not refuse to create a local improvement district which has been properly petitioned where the requirements of section 7-14-2710(1), MCA, are met.

3. The county's share of the costs of the improvement may be paid either from the county road fund or from the general fund.

4. Pursuant to section 7-14-2714, MCA, the county may construct or improve the road and thereby meet its share of the costs by providing in-kind services. Otherwise, the county's share must be paid from county funds in accordance with section 7-14-2733, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 42

PARKS - Special dedication to municipality restricts authority of municipality to alienate land without a municipal election;
PROPERTY, PUBLIC - When held by a municipality under specific dedication language, "to the use of the public forever," sale must be approved by electors of the municipality;
MONTANA CODE ANNOTATED - Section 7-8-4201.

HELD: Park dedication language in a subdivision plat dedicating certain lands "to the use of the public forever" creates a trust for a specific purpose and under the terms of section 7-8-4201, MCA, a municipal election must be held before the city can dispose of the property.

24 January 1986

Jim Nugent
City Attorney
201 West Spruce Street
Missoula MT 59801

Dear Mr. Nugent:

You have asked my opinion concerning:

> Whether the park dedication language of High Park subdivision creates a public trust for a specific purpose.

This language does create such a trust and therefore the sale of the park property must be approved by the electors of Missoula before the city can dispose of the property.

Before discussing my reasoning I will set forth the background facts upon which your question is based. The park in the High Park subdivision was dedicated to the City of Missoula in 1969 as part of the approval process for this subdivision in the south hills. The park is

ten acres in size and has never been developed or used formally as a park. It is surrounded by adjacent landowners, presumably who purchased parcels within the original subdivision. The dedicated park property has poor public access, which may be limited to a single footpath.

The question concerning the park's sale has arisen because one adjacent landowner would like to purchase the property. The dedication language on the plat provides in pertinent part:

> High Park No. 1 and the lands included in all streets, avenues, public squares and pedestrian thoroughfares are dedicated, donated and granted to the use of the public forever.

As you have noted, the answer to your question turns on the proper interpretation of the dedication language. Montana statutes provide that property held in trust for a specific purpose must be the subject of a municipal election before it is sold. § 7-8-4201(2)(b), MCA. The entire text of this statute reads as follows:

> Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.
>
> (2) (a) Such lease or transfer shall be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.
>
> (b) If the property is held in trust for a specific purpose, the sale or lease thereof must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose.
>
> (3) Nothing contained herein may be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore acquired for parks within the limitations prescribed by 7-16-4223.

Montana case law has not specifically interpreted the statutory language "held in trust for a specific purpose." However, the statute has been addressed generally several times, and most recently in Prezeau v. City of Whitefish, 198 Mont. 416, 646 P.2d 1186 (1982).

Prezeau concerned a Whitefish city park that was created in 1909 when the land was conveyed to the city with this language: "[P]roperty to be used exclusively for public park purposes ...." When Whitefish decided to change part of the park's use to a quasi-public rifle range in 1981, the question arose whether the city had to hold an election prior to issuing a lease.

The Montana Supreme Court held that such an election was necessary. The Court noted that the property was held for a specific use and whether the new use was compatible with the old use as a park was irrelevant to the application of the statute and thus the need for an election. Prior case law that held otherwise was overruled by the Court. See Hames v. City of Polson, 123 Mont. 469, 215 P.2d 950 (1950); Colwell v. City of Great Falls, 117 Mont. 126, 157 P.2d 1013 (1945).

Prezeau, however, is of limited assistance to our inquiry here because neither party nor the Court disputed that the dedication language created a trust with a "specific purpose."

Consulting treatises and case law from other jurisdictions, it is apparent that the basic language of the High Park plat dedicating streets and squares "to the use of the public forever" does constitute a specific purpose. This conclusion is based upon an examination of underlying general principles.

A municipal corporation can hold property in either a proprietary or governmental capacity. Land held in a governmental capacity is that land held for a public use. Statutes such as section 7-8-4201, MCA, are a reflection of common law prohibitions against the alienation of land held in a governmental capacity. 10 McQuillin Municipal Corporations § 28.38 at 83, 84 (3d ed.), states:

> A municipal corporation cannot sell or dispose of property devoted to a public governmental use or purpose, as already has been observed,

> without special statutory or charter authority, since as to governmental functions the municipality is a mere agent of the state and subject to control by the state legislative authorities. For instance, property may not be sold where it has been acquired or dedicated for public use as a common, or as a park, or for school uses, or for other public governmental uses. In this sense all property is public which has been dedicated to public use, or which may be affected by a public trust, either general or special. Municipal corporations hold all property in which the public is interested, such as streets, alleys, public squares, commons, parks and wharves, in trust for the use of the public; and, on principle, such trust property can be disposed of by the municipality only in accordance with the terms of the trust, i.e., in the public interest as declared by statute.

Thus the general prohibition on alienation applies to all lands acquired for public uses, regardless of whether there is a more specific dedication, for instance, that designating a public right-of-way, library, or swimming pool.

That the land here in question was dedicated "for the public use" makes the dedication special within the meaning of the statute. Contrasted to this dedication would be an unconditional quit claim conveyance to the City of Missoula. The City of Missoula would then hold the property in a proprietary capacity. Municipalities holding such property in a proprietary capacity are free to dispose of the land to the same extent that a private individual is. 10 McQuillin Municipal Corporations § 28.37 at 77 (3d ed.).

The case law of other jurisdictions reflects the broad notion of inalienability of lands dedicated for public use. An appellate court of New York in Town of Brookhaven v. Arnonauer, 65 A.D.2d 570, 409 N.Y.S.2d 148, 150 (1978), noted:

> [T]he principle is well established in this state that park property may not be alienated

> without express legislative permission. [Citations omitted.]

In the State of Washington the appellate courts have noted that property once acquired and devoted to public use cannot be alienated without legislative authority, either express or implied. Commercial Waterway Dist. v. Permanente Cement Co., 61 Wash. 2d 509, 379 P.2d 178 (1963); Nelson v. Pacific County, 36 Wash. App. 17, 671 P.2d 785 (1983).

To a certain extent the Supreme Court of Montana has also endorsed a strict approach to the conveyance of public lands. In Lloyd v. City of Great Falls, 107 Mont. 442, 447, 86 P.2d 395, 397 (1939), the Court quoted with approval from McQuillin:

> Where lands have been dedicated and used for a public park or square, the municipal corporation holds the title in trust for the public and has no power ... [to sell the lands without legislative authorization].

The legislative authorization referred to in Lloyd is the Montana statutory requirement of a municipal election.

Although the Montana statute does not include an exemption for public lands not presently in use, several states have allowed summary conveyance of specially dedicated public lands where the lands are not publicly used or capable of such use. Oregon has accomplished this result legislatively with a statute that allows the state or political subdivision to sell, exchange, convey, or lease property that is "not needed for public use or when the public interest may be furthered." Or. Rev. Stat. § 271.310(1). In Oklahoma, the Supreme Court accomplished a similar result judicially. In State ex rel. Remy v. Agar, 559 P.2d 1235 (Okla. 1977), the Court took notice of the general rule prohibiting alienation of "land held for the public use" but then recognized that where the public use is abandoned, or the property has become unsuitable or inadequate for that purpose, it may be disposed of.

In Lloyd, the Court did use the qualifying language: "Where lands have been dedicated and used ...." (Emphasis added.) However, the legislative authority

for alienation of public lands, § 7-8-4201, MCA, contains no similar qualification. The statute applies to all land "held in trust for a specific purpose," not just land held in trust and used for a specific purpose.

Subsequent to Lloyd, the Montana Supreme Court cast a strict construction upon the terms of this statute. In the previously discussed case of Prezeau v. City of Whitefish, 198 Mont. 416, 646 P.2d 1186, the Court held that an election must be held upon any sale or lease, not simply those sales or leases that were in abrogation of the specific trust purpose. The Court refused to read terms into the statute and specifically overruled prior precedent that had committed this error.

In summary, I note that the dedication language expressly established a public use. Within the context of a subdivision plat, this use would be considered "a specific purpose" under the terms of the statute. The disposition of such property requires legislative authority. The direction of section 7-8-4201(2), MCA, is that property held for a specific purpose is not to be summarily disposed of without giving the public affected an opportunity to participate. In this case that participation is a municipal election held on the sale. The fact that the High Park subdivision park has not been used as a public park would not affect the applicability of the alienation statute. While the latter issue has not been addressed judicially in Montana, the Supreme Court has shown an inclination to strictly construe the language of section 7-8-4201, MCA.

THEREFORE, IT IS MY OPINION:

> Park dedication language in a subdivision plat dedicating certain lands "to the use of the public forever" creates a trust for a specific purpose and under the terms of section 7-8-4201, MCA, a municipal election must be held before the city can dispose of the property.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 43

SUBDIVISION AND PLATTING ACT - Requirement that landowner must apply to the local governing body for a determination of whether access and easements are suitable in divisions of land consisting exclusively of parcels of 20 acres or larger;
MONTANA CODE ANNOTATED - Sections 76-3-505(2), 76-3-609(2);
SESSION LAWS OF 1985 - Chapter 579.

HELD: 1. In divisions of land consisting exclusively of parcels 20 acres or larger, the landowner must apply to the local governing body for a determination of whether appropriate access and easements are properly provided.

2. Where the landowner elects on his application to accept a written determination that access and easements are not suitable for the purposes of providing services to the divided parcels, the local governing body may attach this notation to the instrument of transference prior to recordation and forego any review of access suitability.

27 January 1986

William A. Douglas
Lincoln County Attorney
Lincoln County Courthouse
Libby MT 59923

Dear Mr. Douglas:

You have requested my opinion on the following questions:

1. Whether the provisions of the 1985 Montana Laws, ch. 579, require that an application for review by the governing body, for determination of whether there exist appropriate access and easements, must be made in every case of divisions

of land consisting exclusively of parcels 20 acres or larger.

2. Whether the governing body must review the division of land for the purpose of determining whether appropriate access and easements are properly provided in all cases, whether an application for review is or is not submitted by the divider.

Chapter 579 of the 1985 Montana Laws amended two sections of the Montana Subdivision and Platting Act (hereinafter "Act"). Section 76-3-505, MCA, entitled "Provision for summary review of subdivisions and other divisions of land," was amended in part to read:

> (2) Local subdivision regulations must include procedures for review of those divisions of land consisting exclusively of parcels 20 acres or larger subject to this chapter. Rules governing review of these divisions of land shall be limited to a written determination of whether appropriate access and easements are properly provided.

The procedures for review of such divisions were the subject of an amendment to a second section of the Act. Section 76-3-609, MCA, was amended with the following paragraph quoted in part:

> (2) (a) For divisions of land consisting exclusively of parcels 20 acres and larger, the governing body shall review the division of land within 35 days of the submission of an application for review. The governing body's review must be limited to a written determination that appropriate access and easements are properly provided. The review shall provide either:
>
> (i) that the access and easements are suitable for the purposes of providing appropriate services to the land; or
>
> (ii) that the access and easements are not suitable for the purposes of providing appropriate services to the land, in which

case the county, the school district or districts, and other authorities and districts in which the land is located will not provide services that involve use of the unsuitable access and easements. Such services include:

(A) fire protection;

(B) school busing;

(C) ambulance;

(D) snow removal; and

(E) similar services as determined by the governing body.

(b) The governing body shall deliver a copy of the determination of the review to the county clerk and recorder to be reflected on the certificate of survey or deed of conveyance of the land that was subject to review.

The statutory amendments were approved by the Legislature on April 19, 1985, and became effective October 1, 1985.

Your opinion request specifically questions whether there is any requirement in the new law that a landowner dividing his property submit an application for review. You suggest that the review process is only triggered by the submission of an application but that submittal of an application is left to the discretion of the landowner. I do not agree.

Examining the plain language of the amended statute, I find two directives that support a holding that an application and restricted review are now mandatory for the larger parcels. The first directive is in the language of section 76-3-505(2), MCA, which states: "[S]ubdivision regulations must include procedures for review of those divisions of land consisting exclusively of parcels 20 acres or larger subject to this chapter." (Emphasis added.) There is no statutory exemption for particular divisions of land consisting of 20 acres or more where the landowner does not want to invoke the review process by not making application. Review

procedures must exist for all divisions regardless of anticipated use.

The second directive is found in section 76-3-609(2)(a), MCA: "[T]he governing body shall review the division of land within 35 days of the submission of an application for review." (Emphasis added.) This language demonstrates that the Legislature intended an application must be submitted. This is not a case where language must be added to give a statute effect. Neither courts nor the Attorney General may insert into a statute what has been omitted or omit what has been inserted. § 1-2-101, MCA.

Accepted rules of statutory construction also guide my interpretation here. In the construction of a statute, the intention of the Legislature is to be pursued, if possible. § 1-2-102, MCA. The title of the Act is an indication of the Legislature's intent. In re Coleman's Estate, 132 Mont. 339, 343, 317 P.2d 880, 882 (1957). The act that became chapter 579 was entitled: "An Act Providing Restricted Review Requirements for Minor Subdivisions and Other Divisions of Land; Amending Sections 76-3-505 and 76-3-609, MCA." I note that the Act is entitled "Review Requirements" as opposed to review "options," "guidelines," or other language that could have been used to indicate a discretionary process. If the application process were viewed to be discretionary or elective with the subdivider of land, the plain intent of the Legislature to bring large parcels under review would be nullified.

For the foregoing reasons, I conclude that chapter 579 provides for a mandatory application process. This conclusion is based first on the plain meaning of the words used, and second on the obvious intent of the Legislature in enacting the statute. See Department of Revenue v. Puget Sound Power & Light Co., 179 Mont. 255, 587 P.2d 1282 (1978).

Since I have answered your first question affirmatively, the second question is moot. As discussed, applications must be submitted for statutorily defined divisions of land 20 acres or larger. This act invokes the review process. Where an application is not filed for a division of land, the local governing body's course of action will lie with enforcing the application

requirement, not with proceeding with an independent review and access suitability determination.

Your opinion request raises the issue of whether the subdivider who does not wish to benefit from the provision of future services must participate in the review process. I have held that an application for review is mandatory. However, that review may be limited to the final determination of suitability. If a subdivider desires to stipulate to a nonsuitability determination on the filed deed I discern no conflict with the statutes. Furthermore, I can foresee benefits to such an approach since an expedited review process would facilitate transferences where the land vendor recognizes access and easements are physically impossible to provide.

Further questions that have arisen concerning definitions of suitability and what standards are to be applied are beyond the scope of this opinion. I only note that the statutes leave the adoption of review regulations to the local governing body.

THEREFORE, IT IS MY OPINION:

1. In divisions of land consisting exclusively of parcels 20 acres or larger, the landowner must apply to the local governing body for a determination of whether appropriate access and easements are properly provided.

2. Where the landowner elects on his application to accept a written determination that access and easements are not suitable for the purposes of providing services to the divided parcels, the local governing body may attach this notation to the instrument of transference prior to recordation and forego any review of access suitability.

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 December 31, 1985. This table includes those rules adopted during the period January 1, 1986 through March 31, 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 December 31, 1985, this table and the table of contents of this issue of the MAR.

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