RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE FINANCIAL BUREAU

In the matter of the proposed amendment of a rule pertaining to applications	)))	NOTICE OF PROPOSED AMENDMENT OF 8.80.501 APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 10, 1987, the Financial Bureau proposes to amend the above-stated rule.

2. The proposed amendment of 8.80.501 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2356 and 8-2357, Administrative Rules of Montana)

"8.80.501 APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION (1) Application for authorization to install and maintain an automated teller machine ~~must~~ may be filed by a financial institution or a business entity ~~owned by~~ other than a financial institution ~~or institutions~~. The application shall be made on forms provided by the department and shall contain the following information in addition to any other information which the department may determine to be necessary.

(a) The name and address of the financial institution or business making application.

(b) through (3) will remain the same."

Auth: 32-6-401, MCA Imp: 32-6-202, MCA

REASON: The Financial Bureau is proposing this amendment to conform the rule to section 32-6-202, MCA.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Financial Bureau, Lee Metcalf Building, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620-0542, no later than October 8, 1987.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Financial Bureau, Lee Metcalf Building, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620-0542, no later than October 8, 1987.

5. If the Bureau receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be

directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

FINANCIAL BUREAU

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

Certified to the Secretary of State, August 31, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE FINANCIAL BUREAU

In the matter of the proposed amendment of a rule pertaining to applications	NOTICE OF PROPOSED AMENDMENT OF 8.80.501 APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 10, 1987, the Financial Bureau proposes to amend the above-stated rule.

2. The proposed amendment of 8.80.501 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2356 and 8-2357, Administrative Rules of Montana)

"8.80.501 APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION (1) Application for authorization to install and maintain an automated teller machine ~~must~~ may be filed by a financial institution or a business entity ~~owned by~~ other than a financial institution ~~or institutions~~. The application shall be made on forms provided by the department and shall contain the following information in addition to any other information which the department may determine to be necessary.

(a) The name and address of the financial institution or business making application.

(b) through (3) will remain the same."

Auth: 32-6-401, MCA Imp: 32-6-202, MCA

REASON: The Financial Bureau is proposing this amendment to conform the rule to section 32-6-202, MCA.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Financial Bureau, Lee Metcalf Building, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620-0542, no later than October 8, 1987.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Financial Bureau, Lee Metcalf Building, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620-0542, no later than October 8, 1987.

5. If the Bureau receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be

directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

FINANCIAL BUREAU

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

Certified to the Secretary of State, August 31, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE BANKING BOARD

In the matter of the proposed amendment of a rule pertaining to application procedures and the proposed adoption of a new rule pertaining to chartering of state banks without notice	NOTICE OF PROPOSED AMENDMENT OF 8.87.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE CHARTERED BANK AND THE PROPOSED ADOPTION OF NEW RULE I STATE BANK ORGANIZED FOR PURPOSE OF ASSUMING DEPOSIT LIABILITY OF ANY CLOSED BANK

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 10, 1987, the State Banking Board proposes to amend and adopt the above-stated rules.

2. The proposed amendment of 8.87.203 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2580 and 8-2581, Administrative Rules of Montana)

"8.87.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE CHARTERED BANK (1) through (h) will remain the same.

(2) An application fee of ~~one~~ three thousand ~~five hundred~~ dollars ~~($1,500)~~ ($3,000) shall be paid to the state of Montana at the time of application and thereafter shall not be refundable in whole or in part.

(3) through (5) will remain the same."

Auth: 32-1-203, MCA Imp: 32-1-203, MCA

REASON: This amendment is being proposed to make fees commensurate with costs.

3. Proposed new Rule I will read as follows:

"I. STATE BANK ORGANIZED FOR PURPOSE OF ASSUMING DEPOSIT LIABILITY OF ANY CLOSED BANK (1) The state banking board is empowered to issue a certificate of authorization without notice or hearing as required by section 32-1-204, MCA.

(2) All provisions of sub-chapter 2, ARM 8.87.202 and ARM 8.87.203, application procedures, apply except subsection (c), summary of evidence demonstrating reasonable public necessity and demand for a new bank; and subsection (4), notification to applicants to perfect application. Sub-chapter 3, new bank charter, ARM 8.87.302, 8.87.303 and 8.87.304 also apply.

(3) Prior to submitting a bid for the assets and liabilities of a closed bank, organizers must:

(a) appoint a spokesperson who is empowered to speak for and sign documents on behalf of the organization;

(b) have written verification in hand that capital for the new bank is on deposit and will be available prior to the new bank opening;

(c) have written verification of blanket bond coverage for the new bank;

(d) provide all details of the proposed purchase arrangement along with a copy of the purchase and assumption agreement and other related documents required by the closed bank receiver.

(4) If the bidder for the closed bank contemplates using an existing state bank to acquire assets and assume liabilities of a closed bank only sub-chapter 3 ARM 8.87.303 applies.

(5) Details of the proposed purchase along with a copy of the purchase and assumption agreement and an application fee of $1,500 will be submitted to the department prior to submitting a bid for the closed bank.

(6) Approval of charter application under ARM 8.87.501 will be accomplished through a telephone conference call with a quorum of the board participating."

Auth: 32-1-204(6), MCA Imp: 32-1-204(6), MCA

REASON: The 50th Legislature passed SB 374 which authorizes the state banking board to issue a certificate of authority to operate a state bank without a public hearing in certain circumstances.

The board may issue such a certificate only when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose.

It is in the best interests of the public to maintain community banking services and prevent the loss of banking facilities. It is the intent of this proposed rule to provide a procedure enabling another state bank to take over the functions of a closed state bank rapidly so that banking services are maintained.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the State Banking Board, Lee Metcalf Building, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620-0542, no later than October 8, 1987.

5. If a person who is directly affected by the proposed amendment and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the State Banking Board, Lee Metcalf Building, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620-0542, no later than October 8, 1987.

6. If the board receives requests for a public hearing on the proposed amendment and adoption from either 10% or 25, whichever is less, of those persons who are directly affected

by the proposed amendment and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

STATE BANKING BOARD
KEITH L. COLBO, CHAIRMAN

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

Certified to the Secretary of State, August 31, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Adoption of a Rule regarding distribution of benefits from the uninsured employers fund	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF PERMANENT RULE

TO ALL INTERESTED PERSONS:

1. On October 1, 1987, at 9:00 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of a permanent rule concerning distribution of benefits from the uninsured employers fund by the division of workers' compensation.

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

RULE I UNINSURED EMPLOYERS FUND DISTRIBUTION (1) Any claimant incurring an industrial injury or occupational disease in the course of employment with an uninsured employer on or after July 1, 1987, is eligible to apply for benefits by completing forms provided by the division. Upon receipt by the uninsured employers' fund of properly executed forms from a claimant, the division will initiate an investigation to determine whether the claimant meets eligibility requirements for the uninsured employers' fund. If claimant is found to be eligible, the division will send a written notice to the employer advising of the employers' responsibilities under the law.

(2) Compensation may be paid from the date the fund accepts liability for a claim, if sufficient funds are available.

(3) Estimated costs of administration for the fiscal year will be prepaid at the beginning of the fiscal year. Actual costs will be reviewed quarterly and adjustments will be made as required. The fund shall maintain a minimum balance sufficient to cover bad debts, administrative costs and other charges deemed appropriate by the division. The difference between the fund balance and the minimum balance shall be known as the "available balance" which is the amount to be utilized for making payments.

(4) Once a month the division shall specify a percentage at which all known wage loss benefits due for the prior month under Sections 39-71-701, 39-71-702, and 39-71-703, MCA, will be paid. This percentage shall be known as the "Uninsured Rate Factor" (URF). This factor will be calculated by dividing the available balance for

the month by the total wage loss benefits due for the month. Only those benefits included in the calculation of the URF at the time it is calculated will be paid during the month for which the URF is set. The URF shall not exceed 100%. The fund will not make payments for any month in which the URF falls below 17%. The division shall maintain records of the URF established for each month.

(5) If funds are available after payment of all wage loss liabilities, medical and other benefits may be paid at an appropriate percentage.

(6) The Division will coordinate collection of moneys for benefits. Amounts collected from employers will be set aside and directed to the individual claimants or returned to the uninsured employers fund if benefits were paid on behalf of the claimant. Employers will be charged a collection fee to be established by the division which will be credited to the uninsured employers' fund.

3. The rationale for adopting this rule is to establish a reasonable procedure for distributing benefits from the uninsured employers fund as funds are available. This rule is authorized by Section 39-71-203, MCA, as amended by Section 5, and extended by Section 69 of Chapter 464 of the Laws of 1987. This rule implements 39-71-503, MCA, as amended by Section 14 of Chapter 464 of Laws of 1987.

4. Steven J. Shapiro, Chief Legal Counsel, of the division has been designated as hearing examiner to preside over and conduct the hearing.

5. Interested parties may submit their data, views and arguments, either orally or in writing, at the hearing. Written argument, views or data may also be submitted to Steven J. Shapiro, Chief Legal Counsel, Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than October 8, 1987.

6. This permanent rule is proposed to replace the temporary rule adopted effective July 1, 1987.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: August 31, 1987

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Adoption of a Rule regarding the impairment rating procedure	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF PERMANENT RULE

TO ALL INTERESTED PERSONS:

1. On October 1, 1987, at 11:00 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of a permanent rule regarding the impairment rating dispute procedure by the Division of Workers' Compensation.

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

RULE I IMPAIRMENT RATING DISPUTE PROCEDURE (1) An evaluator must be a qualified physician licensed to practice in the state of Montana under Title 37, chapter 3, MCA, and board certified in his area of specialty appropriate to the injury of the claimant. The claimant's treating physician may not be an evaluator. The division will develop a list of evaluators which may include those physicians nominated by the Board of Medical Examiners.

(2) The division will arrange evaluations as close to the claimant's residence as reasonably possible.

(3) The division will give written notice to the parties of the time and place of the examination. If the claimant fails to give 48 hours notice of his inability to attend the examination, he is liable for payment of the evaluator's charges incurred except for good cause shown.

(4) The division may request a party to submit all pertinent medical documents including any previous impairment evaluations to the selected evaluator.

(5) Any party wanting to provide information to an evaluator or inquire about the status of an evaluation shall do so only through the division.

(6) The impairment evaluators shall operate according to the following procedures:

(a) The evaluator shall submit a report of his findings to the division, claimant and insurer within fifteen (15) days of the date of the examination.

(b) If another evaluation is requested within 15 days after the first evaluator mailed the first report, the

division will select a second evaluator who will render an impairment evaluation of the claimant.

(c) The second evaluator shall submit a report of his findings to the division, claimant and insurer, within fifteen (15) days of the date of the examination.

(d) The division shall submit both reports to the third evaluator, who shall then submit a final report to the division, claimant and insurer within thirty (30) days of the date of the examination. The third evaluator must obtain division approval prior to seeking other consultation. The final report must certify that the other two evaluators have been consulted.

(e) If neither party disputes the rating in the final report, the insurer shall begin paying the impairment award, if any, within 45 days of the third evaluator's mailing of the report.

(f) Either party may dispute the final impairment rating by filing a petition with the Workers' Compensation Court within fifteen (15) days of the third evaluator's mailing of the report.

(7) If a claimant obtains an impairment rating from any physician other than his attending physician without prior approval of the insurer, the insurer is not liable for payment of either the physician's bill or the impairment rating.

3. The rationale for adopting this rule is to establish procedures for the operation of the impairment rating panel under the provisions of the Workers' Compensation Act. This rule is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464 of the Laws of 1987 and by Section 24 of Chapter 464 of Laws of 1987. This rule implements Section 24 of Chapter 464 of Laws of 1987.

4. Steven J. Shapiro, Chief Legal Counsel, of the division, has been designated as hearing examiner to preside over and conduct the hearing.

5. Interested parties may submit their data, views and arguments, either orally or in writing, at the hearing. Written argument, views or data may also be submitted to Steven J. Shapiro, Chief Legal Counsel, Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than October 8, 1987.

6. The rule is proposed to replace the temporary rule adopted effective July 1, 1987.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: August 31, 1987

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In The Matter of Adoption of Rules regarding rehabilitation	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF PERMANENT RULES

TO: ALL INTERESTED PERSONS

1. On October 1, 1987, at 10:00 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of permanent rules regarding rehabilitation by the Division of Workers' Compensation.

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

RULE I REHABILITATION PROVIDER DESIGNATION (1) Prior to or upon termination of temporary total disability benefits to a disabled worker, a rehabilitation provider must be designated by the insurer or the Division will require them to do so. If maximum healing has been reached by a disabled worker and the insurer has not designated a rehabilitation provider, the insurer will pay total rehabilitation benefits to the disabled worker and the 26-week period will not start until the rehabilitation provider is designated.

RULE II REHABILITATION PANELS (1) Prior to referral to a rehabilitation panel, the following requirements must be met:

(a) The worker has not returned to work,

(b) the insurer has made a written request to the division, on a form approved by the division, to refer the worker to a rehabilitation panel, and

(c) the insurer has submitted to the division three copies of all of the worker's medical records, rehabilitation reports, and other pertinent information in its possession.

(2) (a) Rehabilitation panels may convene in the following cities in Montana as often as necessary in order that the rehabilitation panel evaluations are expeditiously handled:

(i) Butte
(ii) Billings
(iii) Missoula
(iv) Kalispell
(v) Helena
(vi) Bozeman
(vii) Great Falls

(b) If a worker is receiving total rehabilitation benefits, the panel shall issue a report within the time period for which the worker is eligible for the benefits, unless the period is extended by the insurer or the division as provided in Section 44(3) of Chapter 464 of Laws of 1987.

(c) The worker and insurer shall be given written notice of the date and place the panel will convene.

(d) If additional information is required in order to provide a complete report, the panel shall request this information from any person or persons who have access to this information and then reconvene at a later date to complete the report.

(3)(a) The members of the rehabilitation panel, after reviewing all pertinent information submitted, shall issue a written report.

(b) The report shall be signed by each member of the panel and contain the following information:

(i) a finding of the first appropriate option in Section 36 of Chapter 464, that the worker is suited for and what information supports this option, and

(ii) a finding of why any prior option in Section 36(2) of Chapter 464 does not apply to this worker.

(c) If the panel's findings support the options of Sections 36(2)(a), (b), or (c), of Chapter 464 (return to the same position; return to a modified position; or return to a related occupation suited to the claimant's education and marketable skills), as suitable for returning a worker to work, the report should also contain the following information:

(i) a finding of the type of job or jobs in the worker's local and statewide job pool,

(ii) a finding that the jobs are part of the worker's job pool as defined in Section 34(7) of Chapter 464, and

(iii) a finding of the worker's anticipated earnings based on his level of experience stated either as a range or an average of anticipated earnings for both the local and the statewide job pool.

(d) If the panel's findings support the options of Section 36(2)(d) of Chapter 464 (on-the-job training), as suitable for returning a worker to work, the report should also contain the following information:

(i) a finding of the type or types of on-the-job training programs in the worker's local or statewide job pool,

(ii) a finding that the jobs are part of the worker's job pool as defined in Section 34(7) of Chapter 464, and

(iii) a finding of the worker's anticipated earnings based on his level of experience stated either as a range or as an average of anticipated earnings for both the local and the statewide job pool.

(e) If the panel's findings support the option of Section 36(e) or (f) of Chapter 464 (short-term retraining program or long-term retraining program), as necessary for returning a worker to work, the report shall also contain the following information:

(i) a finding of the type and length of retraining program that has been identified as suitable for the worker and the information supporting his finding,

(ii) a finding of the positions that will be available to the worker in the local or statewide job pool following retraining, and

(iii) a finding of the worker's anticipated earnings following retraining either as a range or an average of the anticipated earnings in both the worker's local and statewide job pool.

(f) If the panel's findings support the option of Section 36(g) of Chapter 464 (self-employment), as suitable for returning a worker to work, the report shall also contain the following information:

(i) a finding of the area or areas of self-employment that are commensurate with the worker's abilities, education, work experience and medically determined restrictions and what information supports this finding,

(ii) a finding of the limitations the worker may have in self-employment including physical limitations and any limitations in the worker's ability to manage the business,

(iii) a finding of what assistance will be necessary in the day-to-day running of the business or in the area of business management, and

(iv) a finding of the worker's anticipated earnings from the self-employment venture.

RULE III AUXILIARY REHABILITATION BENEFITS (1) A claimant may request auxiliary rehabilitation benefits and must obtain the insurer's authorization prior to incurring such expenses.

(2) Travel and relocation expenses may be paid to a worker on the same schedule as reimbursed to state employees in the course of state business.

(3) Mileage and per diem expenses may be paid for up to five round trips in searching for new employment.

(4) Relocation expenses include actual expenses of moving by a commercial mover, or actual charges for rental of a truck or trailer by a commercial rental company and receipted fuel expenses.

(5) Auxiliary rehabilitation benefits do not include the expenses of long term commuting.

(6) The division may order the insurer to pay such other reasonable and necessary auxiliary rehabilitation benefits as it deems appropriate.

RULE IV LOCAL JOB POOL AREA DEFINITION (1) A worker's local job pool area will be based on the Local Job Service Office area in which the worker resides.

3. The rationale for adopting these rules is to establish procedures for the operation of rehabilitation panels and to detail substantive provisions of the rehabilitation statutes within the Workers' Compensation Act. These Rules are authorized by Section 39-71-203, MCA, as amended by Section 5 and extended by Section 69 of Chapter 464 of the Laws of 1987. These rules implement Sections 34 through 50 of Chapter 464 of Laws of 1987.

4. Steven J. Shapiro, Chief Legal Counsel of the division has been designated to preside over and conduct the hearing.

5. Interested parties may submit their data, views and arguments, either orally or in writing, at the hearing. Written argument, views or data may also be submitted to Steven J. Shapiro, Chief Legal Counsel, Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than October 8, 1987.

6. These rules are proposed to replace the temporary rules adopted effective July 1, 1987.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: August 31, 1987

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In The Matter of Amendment and adoption of Rules regarding Self-Insurers	)	NOTICE OF PROPOSED AMENDMENT OF AND ADOPTION OF RULES REGARDING SELF-INSURERS
	)	NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On October 30, 1987, the Workers' Compensation Division proposes to adopt a rule and amend its rules regarding self-insurers.

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

24.29.702A SOLVENCY AND ABILITY TO PAY (1) Proof of solvency and financial ability to pay compensation, benefits and liabilities is required. Employers or groups of employers electing to be self-insured must demonstrate financial stability by providing audited financial statements that upon analysis indicate sufficient security, as determined by the division, to protect the interests of injured workers. These shall consist of analysis of financial conditions, current and historical, including, but not limited to, the following factors: quick ratio, current ratio, current liabilities to net worth, current liabilities to inventory, total liabilities to net worth, fixed assets to net worth, collection period, inventory turnover, assets to sales, sales to net working capital, accounts payable to sales, return on sales, return on assets, return on net worth, contingent liabilities, comparison to industry standards, income from ongoing operations and corporate bond rating. Only an employer or group of employers meeting financial standards acceptable to the division shall be granted permission to be bound as a plan no. 1 self-insurer.

24.29.702B WHEN SECURITY REQUIRED (1) Security must be deposited with the division by the employer or group of employers on order of the division under the following conditions:

~~(a)~~(a) Every employer or group of employers must deposit security with the division. The deposit requirement may be waived in whole or in part by the Division for individual employers only who provide substantive evidence that the full amount of the deposit is not needed. This evidence shall consider criteria for solvency and ability to pay as set forth in 24.29.702A. A

group of employers exclusively comprised of political subdivisions may be required to deposit security under this rule.

~~(a)~~(b) The employer or group of employers no longer has the solvency or ability to pay compensation, benefits, and liabilities as determined under standards applied in ARM 24.29.702A.

~~(b)~~(c) The employer or group of employers does not have sufficient securities on deposit with the division under section 39-71-2107, MCA, to meet current liabilities, in addition to all other liabilities.

24.29.702C ~~SURETY--BOND~~ SECURITY DEPOSIT -- AMOUNTS REQUIRED (1) When security is required under ARM 24.29.702B, the division will require that ~~surety--bonds~~ such security be deposited in the following amounts:

(a) Under ARM 24.29.702B(1)(a), the amount shall be the greater of: $250,000 or an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

~~(a)~~(b) Under ARM 24.29.702B~~(a)~~(b), the amount shall be equivalent to the employer's or group of employers' total workers' compensation and occupational disease liabilities.

~~(b)~~(c) Under ARM 24.29.702B~~(b)~~(c), the amount shall,be in an amount which, in the division's judgment, provides reasonable protection and guaranty of the payment of outstanding liabilities.

~~(c)--Under--ARM--24.29.702B(c),--the--amount--shall--be--a minimum--of--$500,000--or--110%--of--the--group--of--employers' cumulative--average--paid--losses--over--the--four--previous years,--whichever--is--greater,--and--shall--be--no--less--than--the retention--amount--of--the--group--of--employers'--excess insurance.--~~

24.29.702D SURETY BONDS -- CRITERIA (1) Surety bonds are required under 24.29.702C(a) and (c) above. When a surety bond is required, the following criteria shall apply:

(a) The division shall accept a surety bond only from companies certified by the United States Department of Treasury as "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the most recent Federal Register, which is published annually every July 1, copies are available from the Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, and the Superintendent of Documents, United States Government Printing office, Washington, D.C., 20402. Surety must specify agreement to provide a claims guarantee payment bond.

(b) A bond replaced with another surety bond must be in identical form, be of the same coverage amount and contain inclusive dates of surety coverage. The division must be advised immediately of such a change.

(c) Surety bonds shall name the Montana division of workers' compensation as obligee and be held by the division. Upon discontinuance of self-insured status for any reason, the division shall hold surety bonds of that employer as reserves for all outstanding workers' compensation liabilities. The division shall retain surety bonds until it is satisfied that all liabilities have been met or are properly reserved. In the event liabilities have not been met, the division shall disburse the proceeds of such surety bonds to the maximum extent possible to workers' compensation claimants and providers.

(d) The bond must include a statement that the bonding company is required to give thirty (30) days notice of its intent to terminate future liability to both the principal and the division. However, the bonding company shall not be relieved of liability for injuries occurring prior to the date of termination.

(e) A surety bond shall be issued on the form prescribed by the division as set forth in appendix A.

(2) When the division determines an employer or group has lost its solvency or ability to pay under 24.29.702B(b), or the employer has provided substantive evidence that it has attempted and has been unable to obtain a surety bond, an employer may deposit any other security described in section 39-71-2106(3), MCA, with the division's prior approval.

24.29.702E EXCESS INSURANCE (1) Specific excess and aggregate excess insurance shall be required of all employers and groups of employers electing coverage under plan no. 1 as a proof of financial ability to pay compensation benefits and other liabilities. Aggregate excess insurance will be required of all employers or groups of employers but may be waived by the division for individual employers who provide substantive evidence the policy is not needed. This evidence shall consider diversification of risk, type of industry, financial resources, self-insured retention levels, policy limits of the specific excess policy, safety program, loss experience and other appropriate factors as determined relevant by the division. The contract or policy of specific excess insurance and aggregate excess insurance shall comply with all of the following:

(a) It is issued by a carrier licensed in the United States with a Best's Rating of A+, A or B+. Excess coverage issued by a carrier not rated by Best's will be considered for approval in the discretion of the division.

(b) It is not cancelable or nonrenewable unless written notice by registered or certified mail is given to the other party to the policy and to the division not less than thirty (30) days before termination by the party desiring to cancel or not renew the policy.

(c) Any contract or policy containing ~~any type of~~ a

commutation clause shall provide that any commutation effected thereunder shall not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to any claim apparently closed at the time of initial commutation which is subsequently reopened by or through a competent authority. If the underwriter proposes to settle a liability for future payments payable as compensation for accidents or occupational diseases occurring during the term of the policy by the payment of a lump sum to the employer or group of employers to be fixed as provided in the commutation clause of the policy, then not less than thirty (30) days prior notice to such commutation shall be given by the underwriter(s) or its (their) agent by registered or certified mail to the division. If any commutation is effected, the division shall have the right to direct such sum be placed in trust for the benefit of the injured employee(s) entitled to such future payments of compensation.

(d) If an employer or group of employers becomes insolvent and is unable to make benefit payments, the excess carrier shall make such payments to claimants as would have been made by the excess carrier to the employer, after it has been determined the retention level has been reached on the excess contract, as directed by the division.

(e) All of the following shall be applied toward the reaching of retention level in the excess insurance contract:

(i) payments made by the employer or group of employers;

(ii) payments due and owing to claimant by the employer or group of employers; and

(iii) payments made on behalf of the employer or group of employers by any surety bond under a bond required by the division as defined in ARM 24.29.702C.

(f) Copies of ~~a certificate~~ the certificates and policies of the specific excess insurance and aggregate excess insurance shall be filed with the division for a determination that ~~together with a certification~~ such policy fully complies with the provisions of the workers' compensation and occupational disease acts and these rules.

24.29.702F INITIAL ELECTION -- INDIVIDUAL EMPLOYERS (1) An individual employer initially electing to be bound as a self-insurer must provide the following:

(a) a completed application on forms provided by the division;

(b) audited financial statements for the last two (2) years;

(c) proof that it has been in business for a period of not less than five (5) years; however,

(i) an employer in business less than five (5) years may be considered if its liability is guaranteed by a

parent corporation which has been in business for a period of not less than five (5) years;

(ii) an employer whose liability is guaranteed by a parent corporation must provide a corporate resolution and an agreement of assumption and guarantee of workers' compensation liabilities on forms prescribed by the division as set forth in appendices B and C.

(d) evidence that it has obtained an insurance policy of specific excess and aggregate excess insurance with policy limits, nature of coverage and retention amounts acceptable to the division, as required in ARM 24.29.702E. Excess insurance must be managed by a third-party administrator. Evidence must include the administrator's approved specific and aggregate self insured retention and maximum policy limits;

(e) evidence that it had a minimum of 100 employees per year over the preceding two (2) years; however, an employer with ~~a minimum of~~ less than 100 employees per year over the preceding two (2) years may be considered if its liability is guaranteed by a parent corporation which has a minimum of 100 employees per year and at least two (2) years' experience as a self-insurer in another state and is guaranteeing the employer's liability as provided in ARM 24.29.702F (c) (ii);

(f) a loss run and summary from insurance carriers who provided its coverage during the preceding four (4) years showing each individual claim, date of injury, type of injury, compensation and medical benefits paid to date and amounts reserved for future liability;

(g) evidence that its internal or contracted claims adjustment service is in compliance with ARM 24.29.804;

(h) evidence that it has an effective safety program;

(i) a surety bond in an amount as required in ARM 24.29.702C;

(j) certification that the self-insurance plan is not funded by a regulated or unregulated insurance company;

(k) evidence that internal policies and procedures are satisfactory to administer a self-insurance program.

24.29.702G INITIAL ELECTION -- GROUP OF EMPLOYERS

(1) An employer initially electing to be bound as a group self-insurer must provide the following:

(a) a completed application on forms provided by the division;

(b) a list of all individual employers making up the group;

(c) a signed copy of the by-laws adopted by the group and all documents pertaining to formation, operation and contractual arrangements including amendments and addenda;

(d) a copy of an agreement signed by each individual employer showing:

(i) each employer's agreement to accept joint and several liability for all obligations incurred by the group;

(ii) provisions for addition of a new member to the self-insurance group;

(iii) provisions for withdrawal of a member from the self-insurance group;

(iv) provision for power of attorney between the individual employers and the self-insurance group.

(e) a copy of the last two years' audited financial statements of each individual employer participating in the group and such copy must be submitted for any individual employer joining the group at any time after the group's mutual election;

(f) evidence that each employer in the group has been in business for a period of not less than five (5) years;

(g) evidence that the group had a combined minimum of 100 employees per year over the preceding two (2) years;

(h) a loss run and summary from insurance carriers who provided coverage to each employer in the group during the preceding four (4) years showing each individual claim, date of injury, type of injury, compensation and medical benefits paid to date and amounts reserved for future liability;

(i) evidence that it has an insurance policy of specific excess and aggregate excess insurance with policy limits and retention amounts acceptable to the division, as required in ARM 24.29.702E. Excess insurance must be managed by a third-party administrator. Evidence must include the administrator's approved specific and aggregate self insurance retention and maximum policy limits;

(j) a surety bond in an amount as required in ARM 24.29.702C.

(k) evidence of its internal or contracted claims adjustment service in compliance with ARM 24.29.804;

(l) identification of the financial institution the group will use to deposit and withdraw funds for purposes of paying compensation;

(m) an explanation of how claims reserves will be established on each case and the method of review to assure accuracy and adequacy of the amount of the reserves;

(n) a composite listing of the estimated annual gross premium to be paid by each member of the association;

(o) a projection of administrative expenses for the first year of operation as an amount and as a percentage of the annual premium;

(p) evidence that the group has an effective safety and loss control program;

(q) evidence that internal policies and procedures are satisfactory to operate a group self-insurance program;

(r) resolution by each member authorizing participation in the program;

(s) resolution designating authorized signatures for participation in the program.

24.29.702H PERMISSION (1) When the division finds the employer or group of employers to have the necessary finances, proof of solvency and financial ability as required in ARM 24.29.702A, ~~and~~ security deposited with the division ~~if~~ as required, ~~and~~ proof of excess insurance as required in 24.29.702E, and proof of compliance with requirements of ARM 24.29.702F or 24.29.702G, it will issue the employer or group of employers an order granting permission to carry on business as a self-insurer from the date the finding is made through the remaining portion of the fiscal year within which the election of this plan is made, or through the ensuing fiscal year when the employer or group of employers renews this election. An election under this plan is effective only for the period specified in the order or until the order is revoked in accordance with ARM 24.29.702L.

24.29.702I RENEWAL REQUIRED (1) An employer or group of employers who has effectively elected to be bound by plan no. 1 may renew the election for the next ensuing fiscal year, by meeting all the requirements of ARM 24.29.702 and 24.29.702A by April 30th each year.

(2) At any time the division receives a notification of change as required under (NEW RULE 1), renewal may be required for the remainder of the fiscal year.

(3) If an employer or group of employers does not renew its election, the employer or individual employer of a group must elect to be bound by compensation plan no. 2 or plan no. 3.

24.29.702L SUSPENSION AND REVOCATION OF PERMISSION (1) The division will revoke its order granting permission to carry on business as a self-insurer after determining that the employer or group of employers no longer has the necessary financial resources and ability to pay the compensation, benefits and all liabilities which have been or are reasonably likely to be incurred during the period the employer or group of employers has been a self-insurer and through the remaining fiscal year. The division may suspend the permission to operate as a self-insurer because of changes in status outlined under (NEW RULE I) or on good cause shown pending a hearing and decision on whether the permission should be revoked. The division's revocation order is not effective unless contested case procedures have been conducted in accordance with ARM 24.29.207. An employer or individual employers of a group of employers whose permission to carry on business as a self-insurer has been revoked must elect to be bound by compensation plan no. 2 or plan no. 3 on the effective date of such revocation.

24.29.702M TERMINATION BY SELF-INSURER (1) Any employer or group of employers operating as a self-insurer under plan no. 1 which terminates its self-insurer status,

or the self-insurer status of any or all of its subsidiaries, or members, for any reason, must notify the division in writing of its intent to terminate twenty (20) days before such termination. Until all liabilities have been discharged, a terminated employer or group of employers shall continue to be subject to the provisions of these rules regarding self-insurers. An employer, or individual employers of a group of employers, who terminates as a self-insurer, but continues to operate in business must elect to be bound by compensation plan no. 2 or plan no. 3 on the termination.

NEW RULE I NOTIFICATION OF CHANGES (1) The self-insured employer or group of employers shall notify the insurance compliance bureau, division of workers' compensation in writing,

(a) 30 days prior to implementing changes that may affect its self-insurance status including but not limited to:

(i) ownership or membership,

(ii) name,

(iii) legal status,

(iv) numbers or locations of employees covered in Montana self-insurance program, or

(v) other changes in the policies, procedures or administration of its self-insurance program;

(b) within 30 days of:

(i) adverse change in financial status,

(ii) significant increase in liabilities, or

(iii) reductions, shutdowns, suspensions, closures or strikes of Montana operations.

3. The rationale for adopting and amending the above-referenced rules is to establish further requirements for certification and review of self-insurers in order to assure that workers' compensation benefits will be properly paid to injured workers. The rules are also being amended to conform with the mandatory deposit requirements established in the amendment of 39-71-2106, MCA, by Section 51 of Chapter 464 of Laws of 1987.

4. The adoption and amendment of these rules is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464 of Laws of 1987 and extended by Section 69 of Chapter 464 of Laws of 1987. These rules implement Sections 39-71-403, and 39-71-2101 through 39-71-2109, MCA.

5. Interested parties may submit their data, views or arguments concerning these changes in writing to Steven J. Shapiro, Chief Legal Counsel, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, by October 8, 1987.

6. If a person who is directly effected by the proposed amendment wishes to express data, views, and arguments, orally or in writing, at a public hearing, they must make a written request for a hearing and submit this

request along with any written comments to Steven J. Shapiro at the address above no later than October 8, 1987.

7. If the Division receives requests for a public hearing on the proposed amendment from 25 persons who are directly affected by the proposed amendment or 10% of the population of the State of Montana, 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. The rule will affect all employers who are certified or want to apply to be certified as self-insurers of their workers' compensation liabilities and their employees. If a hearing is requested, notice of a hearing will be published in the Montana Administrative Register at a later date.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: August 31, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In The Matter of Amendment and adoption of a Rule regarding Security Deposits of Plan Number Two Insurers	)))))	NOTICE OF PROPOSED ADOPTION OF RULE NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On October 30, 1987, the Workers' Compensation Division proposes to adopt a rule regarding security deposits of plan number two insurers.

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

RULE I SECURITY DEPOSITS FOR PLAN NUMBER TWO INSURERS

(1) A plan number two insurer may deposit one or more of the following securities to meet its obligation to make a security deposit as required by 39-71-2206, MCA:

(a) United States Bonds. An insurer may deposit bonds which are direct obligations of the United States of America or for which the full faith and credit of the United States of America is pledged for the payment of principal and interest.

(b) Montana Bonds. An insurer may deposit bonds which are general obligations of or for which the full faith and credit of the State of Montana, or any school district, county, city or town in the State of Montana is pledged for the payment of principal and interest.

(c) Surety Bonds. An insurer may deposit a surety bond that meets the following criteria:

(i) The division shall accept a surety bond only from companies certified by the United States Department of Treasury as "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the most current Federal Register, copies of which are available from the Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, and the Superintendent of Documents, United States Government Printing Office, Washington, D.C., 20402. The division will not accept a surety bond issued by the plan number 2 insurer or its affiliates. The surety must specify agreement to provide a claims guarantee payment bond.

(ii) A bond replaced with another surety bond must be identical form, be of the same coverage amount and contain inclusive dates of surety coverage. The division must be advised immediately of such a change.

(iii) Surety bonds shall name the Montana division of workers' compensation as obligee and be held by the division.

(iv) The bond must include a statement that the bonding company is required to give thirty (30) days' notice by certified mail of its intent to terminate future liability to both the principal and the division. However, the bonding company shall not be relieved of liability for injuries occurring prior to the date of termination.

(v) A surety bond shall be issued on a form prescribed by the division.

(d) Certificate of Deposit. Upon prior approval by the division, automatically renewable certificates of deposit from a duly chartered commercial bank located within the United States and insured through the Federal Deposit Insurance Corporation may be accepted by the division as an interim deposit (not to exceed 90 days) in cases where acceptable securities are not immediately available.

(2)(a) How deposit amount is determined. Upon initial authorization by the division to write workers' compensation, a deposit of $200,000 will be required and must be maintained within the division for a minimum of two years. A lesser deposit amount of $100,000 may be required by the division if the insurer meets all of the following criteria:

(i) The insurer has been authorized and has actively transacted multiple line business in the State of Montana for at least five years or the insurer has been authorized to transact workers' compensation business and has actively written such business in one or more states of the United States for at least five years; and

(ii) The insurer has been assigned a rating by A. M. Best of B+ or higher. If modified rating, modifier must be acceptable to the division.

(b) In cases where an amount on deposit at any time is less than $200,000, additional deposit bringing the total up to $200,000 may be required upon consideration of the following factors including but not limited to:

(i) A. M. Best rating,

(ii) financial status of insurer,

(iii) insurance industry economic conditions,

(iv) changes in management and ownership factors,

(v) decline in market value of deposits, and

(vi) other factors deemed appropriate by the division.

(c) Periodic review by the division of an insurer's liabilities may result in an increase in deposit requirements in compliance with section 39-71-2206(1) and (2), MCA, sufficient to cover all estimated future liabilities in the State of Montana.

(d) In accordance with section 39-71-2206(3), MCA, upon proof from the insurer that liabilities have been reduced, a reduction of the amount held on deposit by the division may be granted at the division's discretion.

Requests for reduction in deposit requirements may be submitted in writing to the division no more frequently than once every twelve months.

(e) Securities shall remain on deposit until the division is satisfied all liabilities of the insurer in the State of Montana have been met or are properly reserved.

(f) The division may require thirty (30) days advance written notice of the intent to exchange securities.

(3)(a) Safekeeping or custodial arrangement. A safekeeping or custodial arrangement with a bank or trust company located in the City of Helena, Montana, may be authorized if the division is satisfied the hours of business do not hinder the division's access to them, or the division's ability to sell and/or collect them, and if the division is satisfied such securities are held under the same conditions of security as if they had been deposited with the division.

(b) If the deposit of securities with the division will result in the need to handle the securities for exchange or remittance of coupons for collection of interest then the division in its discretion may require the securities be held in a safekeeping or custodial arrangement described above at the insurer's direct expense.

(4) The insurer is required to submit the following reports:

(a) Upon initial application and prior to April 1 of each year, or upon request, the insurer shall file with the division:

(i) an information form provided by the division;

(ii) a copy of page 14 "Exhibit of Premiums and Losses-Business in the State of Montana During the Year" of the annual statement of the preceding calendar year;

(iii) insurer experience claims run showing each individual claim, date of injury, type of injury, compensation and medical benefits paid to date and amounts reserved for future liability as of March 1 of each year;

(iv) a complete listing of all active workers' compensation policies in the State of Montana including effective dates, policyholder name, names and locations of entities insured under each policy in Montana, policy number, expiration date; and

(v) other reports and information as required by the division.

(b) Thirty (30) days from the date of issuing a new policy, a signed certificate of insurance must be submitted to the division.

3. The rationale for adopting the above-referenced rule is to establish further requirements for security deposits of plan number two insurers in order to assure that workers' compensation benefits will be properly paid to injured workers. This rule conforms with the mandatory

deposit requirements established in 39-71-2206, MCA, as amended by Section 1 of Chapter 242 of Laws of 1987.

4. The adoption of this rule is authorized by Section 39-71-203, MCA, as amended by Section 2 of Chapter 242 of Laws of 1987 and extended by Section 69 of Chapter 464 of Laws of 1987. This rule implements Section 39-71-2206, MCA, as amended by Section 1 of Chapter 242 of Laws of 1987.

5. Interested parties may submit their data, views or arguments concerning this proposed rule in writing to Steven J. Shapiro, Chief Legal Counsel, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, by October 8, 1987.

6. If a person who is directly affected by the proposed rule wishes to express data, views, and arguments, orally or in writing, at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Steven J. Shapiro at the address above no later than October 8, 1987.

7. If the Division receives requests for a public hearing on the proposed rule from 25 persons who are directly affected by the proposed rule or 10% of the population of the State of Montana, 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. The rule will affect all insurers who write workers' compensation insurance in this state. If a hearing is requested, notice of a hearing will be published in the Montana Administrative Register at a later date.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: August 31, 1987.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to fees for filing notice of agricultural lien and certificate of information obtained by public access, and the requirements of the format for the Notice of Agricultural Lien.	))))))	NOTICE OF PROPOSED ADOPTION OF RULES I - II AND AMENDMENT FOR RULE 44.6.105 - Fees and Format for Filing Notice of Agricultural Lien and Certificate of Information Obtained by Public Access. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 10, 1987, the Secretary of State proposes to adopt and amend rules pertaining to fees and format for filing notice of agricultural liens and certificates of information obtained by public access.

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

3. The proposed rules provide as follows:

RULE I FEES FOR FILING NOTICE OF AGRICULTURAL LIEN (1) Effective November 1, 1987, the secretary of state shall charge and collect for:

(a) filing a notice of agricultural lien, $7.00; and

(b) filing a termination statement, no fee.

AUTH: Chapter 295, Laws 1987 IMP: Chapter 295, Laws 1987

RULE II REQUIREMENTS OF THE FORMAT FOR THE NOTICE OF AGRICULTURAL LIEN (1) Requirements for filing the notice of agricultural lien are as follows:

(a) the names and addresses of the debtor and lienor:

(i) the social security number and/or tax ID number for every debtor listed;

(b) description of lien type and its statutory authority;

(c) description of collateral:

(i) the collateral description must be specific as to the type of crop(s) covered, e.g. wheat, barley, oats, the description of grain or feed will not suffice; and

(ii) list the county where the crop is located;

(d) notation by the county clerk and recorder of the date of filing; and

(e) signature of the lienor.

AUTH: Chapter 295, Laws 1987 IMP: Chapter 295, Laws 1987

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

44.6.105 FEES FOR FILING DOCUMENTS -- UNIFORM COMMERCIAL CODE (1)(a) thru (1)(i) remains the same.

(j) certificate of information obtained by public access, $2.00;

(k) computer printout of collateral description, no fee;

~~(j)~~ (l) remains the same.

AUTH: Sec. 30-9-403, MCA IMP: Sec. 30-9-403, MCA

5. The rules are being proposed and amended to establish fees and format for Notice of Agricultural Liens and certificate of information obtained by public access. The fee charged for the filing requirements are commensurate with costs.

6. Interested persons may present their data, views or arguments concerning the adoption in writing to Larry Akey, Chief Deputy, Secretary of State, Room 225, State Capitol, Helena, Montana, 59620, no later than October 8, 1987.

7. If a person who is directly affected by the proposed rules wishes to present data or express his 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 Larry Akey, Chief Deputy, Secretary of State, Room 225, State Capitol, Helena, Montana, 59620, no later than October 8, 1987.

8. If the agency receives requests for a public hearing on the rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules; from the Administrative Code Committee of the legislature; from a governmental 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.

Dated this 31st day of August, 1987.

JIM WALTERMIRE
Secretary of State

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of 8.48.1105 concerning fees) 48.1105 FEE SCHEDULE

TO: All Interested Persons:

1. On June 25, 1987, the Board of Professional Engineers and Land Surveyors published a notice of proposed amendment of the above-stated rule at page 810, 1987 Montana Administrative Register, issue number 12.

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

3. No comments or testimony were received.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
DICK GUENZI, CHAIRMAN

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

Certified to the Secretary of State, August 31, 1987.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of temporary rules pertaining to youth placement committees	)))	NOTICE OF THE ADOPTION OF TEMPORARY RULES PERTAINING TO YOUTH PLACEMENT COMMITTEES

TO: All Interested Persons

1. On July 30, 1987, the Department of Family Services published notice of the proposed adoption of temporary rules pertaining to youth placement committees at page 1163 of the 1987 Montana Administrative Register, issue number 14.

2. The Department has adopted the rules as proposed.

3. No written comments or testimony were received.

4. The effective date for the adoption of the temporary rules pertaining to youth placement committees is September 1, 1987.

Director, Department of Family Services

Certified to the Secretary of State August 31, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of rules relating to establishing a no-wake speed on portions of Harrison Lake	))))	NOTICE OF THE AMENDMENT OF ARM 12.6.901 ESTABLISHING A NO-WAKE SPEED ON PORTIONS OF HARRISON LAKE

TO: All Interested Persons:

1. On March 12, 1987 the Montana Fish and Game Commission published notice of a public hearing on the proposed amendment of Rule 12.6.901 establishing a no-wake speed limit for portions of Harrison Lake, at page 242, of the Montana Administrative Register, issue number 5.

2. A public hearing was held on April 6, 1987 to consider the proposed amendment of this rule. Several persons attended this hearing and oral and written comments were received.

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

12.6.901 WATER SAFETY REGULATIONS Subsections (1) through 1(b) remain the same.

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

Broadwater County:	(A)	on Canyon Ferry Reservoir: White earth and Goose Bay, within 300 feet of dock or as buoyed;
Carbon County:	(A)	on Cooney Reservoir: all of Willow Creek arm as buoyed;
Daniels County:	(A)	Whitetail Reservoir
Fergus County:	(A)	upper & lower Carter Ponds;
	(B)	Crystal Lake 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;
Flathead County:	(A)	on Flathead Lake: Bigfork Bay
	(B)	Beaver Lake (near Whitefish) 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;
Hill County:	(A)	Beaver Creek Reservoir
Lewis & Clark Co:	(A)	on Canyon Ferry Reservoir: Yacht Basin, Cave Bay, Little Hellgate, Magpie Bay & Carp Bay within 300 feet of dock or as buoyed;
	(B)	on Hauser Reservoir: Lakeside marina and Black Sandy beach within 300 feet of the docks or as buoyed;
	(C)	on upper Holter Lake: Gates of Mountains marina within 300 feet of docks or as buoyed;

(D) on Holter Lake: bureau of land management boat landing as buoyed, Juniper Bay, Log Gulch, Departure Point, Merriweather Camp, and Holter Lake lodge docks.

Lincoln County: (A) Savage Lake during the hours of 5:00 a.m. to 10:00 a.m. and from 7:00 p.m. to 11:00 p.m. each day;

Madison County: (A) on Harrison Lake (Willow Creek Reservoir): all of Willow Creek Arm and Norwegian Arm as buoyed 6:00 p.m. to 11 a.m.

Missoula County: (A) Clearwater River from the outlet of Seeley Lake to the first bridge downstream from Camp Paxson swim dock;

(B) on Holland Lake: Holland Lake Lodge and the Bay Loop campground within 300 feet or as buoyed.

Subsections 1(d) through 2 remain the same.

AUTH: 87-1-303, 23-1-106(1), MCA
IMP: 87-1-303, 23-1-106(1), MCA

4. In adopting the rule, the Fish and Game Commission considered the following comments:

COMMENT: High speed boats, most with waterskiers, disrupt the tranquility of the Lake for shoreline users and swimmers.
RESPONSE: By allowing high speed boating only during certain hours, the Commission attempted to balance the desire for quiet and the expressed desires of boaters.

COMMENT: High speed boats pose a safety hazard to anglers who wade or use a float tube, and cause turbulence, which lowers the quality of the fishing.
RESPONSE: High speed boating is prohibited during the hours when fishing is most popular.

COMMENT: Powerboats disturb wildlife, nesting waterfowl, and cause water, air and noise pollution.
RESPONSE: This comment seems to favor prohibition of powerboats generally, which is beyond the scope of the proposed rule. The rule does attempt to balance recreational and environmental values for this Lake, which has been traditionally enjoyed by power boaters.

COMMENT: The rule should also include a no motor regulation on portions of the Lake.
RESPONSE: Consideration of a no motor regulation for portions of the Lake is beyond the scope of the proposed rule.

COMMENT: Numerous waterskiers opposed the rule as proposed, stating that the area covered by the proposed rule provides the best skiing on the Lake, that the Lake provided the best waterskiing in south western Montana, that adoption of the rule would cause a safety hazard by concentrating skiers in other portions of the Lake, that most boaters exercise reasonable safety precautions, that there have been no serious accidents in recent history, that the rule as proposed unfairly discriminated against water skiers in favor of anglers, and that the Lake did not offer good fishing.

RESPONSE: Based on these comments, the Commission provided for continued use of the Lake by both waterskiers and other users.

COMMENT: Several opponents suggested that if some limitation were found necessary, the Commission should establish a limit for very high speeds but would still allow waterskiing.

RESPONSE: Adoption of this suggestion would have helped address the most severe parts of the problem that prompted the proposed rule, but would not have fully addressed it.

COMMENT: Several opponents claimed there should be few conflicts, since waterskiers and anglers use the Lake at different parts of the day. Other opponents suggested that if some limitation were found necessary, a no-wake speed limit could be required for heavy use periods such as weekends and holidays.

RESPONSE: The Commission based its amendment of the proposed rule and its decision to adopt the rule as amended, on these comments. By establishing specific hours for the no-wake speed limit, anglers and others who prefer the Lake without high speed boats can be assured of a time to enjoy it. Waterskiers who rely on the Lake as a major source of recreation are also assured their time every day, including weekends.

James W. Flynn, Secretary
Fish and Game Commission

Certified to the Secretary of State August 31, 1987.

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

In the matter of the amendment of rules pertaining to definitions, forms, application and special fees, and interim permits	)))))	NOTICE OF AMENDMENT OF ARM 36.12.101 DEFINITIONS, 36.12.102 FORMS, 36.12.103 APPLICATION AND SPECIAL FEES, AND 36.12.104 ISSUANCE OF INTERIM PERMITS

TO: All Interested Persons.

1. On June 25, 1987, the Board of Natural Resources and Conservation published notice of proposed amendment of ARM 36.12.101, 36.12.102, 36.12.103 and 36.12.104 pertaining to definitions, forms, application and special fees, and issuance of interim permits at pages 857-862 of the 1987 Montana Administrative Register, Issue No. 12.

2. No public hearing was contemplated or held, nor was one requested. Public comments were accepted until July 23, 1987. No written or oral comments concerning these rules were received.

3. The Board has amended the rules exactly as proposed.

William A. Shields, Chairman
Board of Natural Resources
and Conservation

Certified to the Secretary of State August 31, 1987.

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

In the matter of the repeal of rule 36.20.101, License and Permit Exemptions, and adoption of new rules under Chapter 20 to regulate weather modification in Montana.	NOTICE OF REPEAL OF ARM 36.20.101 LICENSE AND PERMIT EXEMPTIONS, AND ADOPTION OF 36.20.101A WEATHER MODIFICATION - LICENSES AND PERMITS REQUIRED, 36.20.102 DEFINITIONS, 36.20.103 LICENSES AND PERMITS - FORMS, 36.20.104 LICENSES AND PERMITS - EXEMPTIONS, 36.20.201 LICENSE APPLICATIONS, 36.20.202 LICENSE APPROVAL CRITERIA, 36.20.203 LICENSE TERM AND RENEWAL, 36.20.204 LICENSE TERMINATION, 36.20.301 PERMIT APPLICATIONS - GENERAL, 36.20.302 PERMIT APPLICATIONS - NOTICE OF INTENTION, 36.20.303 PERMIT APPLICATIONS - PROOF OF FINANCIAL RESPONSIBILITY, 36.20.304 PERMIT APPLICATIONS - OPERATING PLANS, 36.20.305 PERMIT APPLICATIONS - HEARINGS, 36.20.306 PROCESSING APPLICATIONS - DEPARTMENT RESPONSIBILITIES, 36.20.307 ACTION ON PERMIT APPLICATIONS - BOARD DECISION CRITERIA, 36.20.308 PERMIT SUSPENSION AND REVOCATION, AND 36.20.401 RECORDS AND REPORTING

TO: ALL INTERESTED PERSONS:

1. On June 25, 1987, a notice of public hearing on the above repeal and adoption of rules was published on pages 863-873, Montana Administrative Register, issue number twelve.

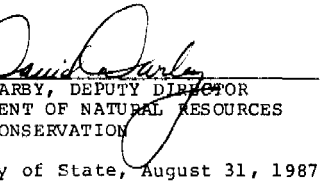
2. On Thursday, July 16, 1987, at 9:30 a.m., the public hearing was held in the main conference room of the Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620.

Present were Gerhard Knudsen, Supervisor of the Water Planning Section of the DNRC who presided over and conducted the hearing; and DNRC staff member Curt Martin. No other person attended and no testimony was received.

No timely comments were received on the substance of the proposed repeal and adoption.

3. The rule is repealed and new rules adopted exactly as proposed.

BOARD OF NATURAL RESOURCES
AND CONSERVATION
WILLIAM A. SHIELDS, CHAIRMAN

BY: 
W. DAVID DARBY, DEPUTY DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Certified by the Secretary of State, August 31, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I relating to Severance Tax. The rule is implemented through the TEMPORARY RULE-MAKING PROCESS.	NOTICE OF THE ADOPTION of Rule I relating to Severance Tax. The rule is implemented through the TEMPORARY RULE-MAKING PROCESS.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rule I relating to severance tax, at pages 1200 through 1201 of the 1987 Montana Administrative Register, issue no. 14.

2. The Department has adopted this rule as proposed.

3. No comments were received regarding the adoption of this rule.

4. The authority for the rules is 15-1-201, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, and the rules implement 15-36-121, and Sec. 4, Ch. 656, L. 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 08/31/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.105 relating to Computation of Withholding - Income Tax.	NOTICE OF THE AMENDMENT ARM 42.17.105 relating to Computation of Withholding - Income Tax.

TO: All Interested Persons:

1. On July 16, 1987, the Department published notice of the proposed amendment to ARM 42.17.105 relating to Computation of Withholding - Income Tax, at pages 1029 and 1030 of the 1987 Montana Administrative Register, issue no. 13.

2. The original notice failed to change the effective date of the withholding rule from January 1, 1987 to July 1, 1987. However, the justification in the original notice explained that the new withholding rates would be effective on July 1. This notice will correct the oversight and the Department has adopted this rule with the following change:

(2) This rule is effective for quarters beginning ~~January~~ JULY 1, 1987.

3. No public hearing was held.

4. One comment was received and it is as follows:

COMMENT: Jim Lear, attorney for the administrative code committee commented that the final adoption notice for this rule should reflect the authority section to be Sec. 10, Ch. 666 rather than Sec. 6, Ch. 666 as noticed. This rule implements Sec. 6, Ch. 666 and 15-30-202, MCA.

RESPONSE: The department agrees with this observation, and this notice will correct the authority section of the rule.

5. The authority for the department to amend this rule is found at 15-30-305, MCA, Sec. 10, Ch. 666, L. 1987, and the rules implement 15-30-202, MCA, Sec. 6, Ch. 666, L. 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 08/31/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.28.406) relating to Motor Fuel Tax.) NOTICE OF THE ADOPTION of Rule I (42.28.406) relating to Motor Fuel Tax.

TO: All Interested Persons:

1. On July 16, 1987, the Department published notice of the proposed adoption of Rule I (42.28.406) relating to Motor Fuel Tax - cardtrol compliance and administration, at pages 1008 and 1009 of the 1987 Montana Administrative Register, issue no. 13.

2. The Department has adopted this rule as proposed.

3. No public hearing was held and no comments were received.

4. The authority for the department to adopt this rule is found at 15-70-104, MCA, Auth Ext. Sec. 5, Ch. 220, L. 1987, Eff. 10/1/87, and the rule implements 15-70-321, 15-70-322, MCA, and Sec. 2, Ch. 220, L. 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 08/31/87.

VOLUME NO. 42 OPINION NO. 23

COUNTY COMMISSIONERS - Authority to establish number of deputy positions in county offices;
COUNTY OFFICERS AND EMPLOYEES - Authority of board of county commissioners to establish number of deputy positions in county offices;
REVENUE, DEPARTMENT OF - Authority of board of county commissioners to establish number of deputy positions in county offices;
MONTANA CODE ANNOTATED - Title 7, chapter 4, part 24; sections 7-4-2401, 7-4-2402, 15-8-101, 15-8-102;
REVISED CODES OF MONTANA, 1947 - Section 16-2409.

HELD: 1. As between the state and county governments, the authority to establish a deputy position and the commensurate authority to eliminate a deputy position in the office of the county reside with county government.

2. As between the county assessor and the board of county commissioners, the authority to add or eliminate a salaried deputy position resides with the board of county commissioners.

21 August 1987

Gerry M. Higgins
Golden Valley County Attorney
Golden Valley County Courthouse
Ryegate MT 59074

Dear Mr. Higgins:

You have requested my opinion on the following question:

> If the board of county commissioners finds that a deputy assessor is not required, can they eliminate the position?

I understand that your question is at least in part prompted by action of the 1987 Montana Legislature which required that county governments assume 30 percent of

the salary costs for the office of county assessor. (House Bill No. 2, 1987 Montana Legislature.) Prior to that action and since the adoption of the Montana Constitution in 1972, state government paid the entire salary costs for deputies in the office.

It is first necessary to point out that your request, and hence this opinion, deals with the authority to establish or eliminate a position, and that the authority to fill the position is not at issue here and may be entirely different. There are two major inquiries contained within the question you pose, the first of which is: As between the State (Department of Revenue) and local government, who has authority to establish the number of deputy positions in the county assessor's office?

The statutes are in apparent conflict on the question. Supporting state authority for control over the number of deputy assessor positions is section 15-8-101, MCA:

> The department of revenue shall have full charge of assessing all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform its duties.

The next section of law (§ 15-8-102, MCA) provides that county assessors are "agents of the department of revenue."

Support for local control over the number of deputy positions for the county assessor is found in Title 7, chapter 4, part 24, MCA. Section 7-4-2402, MCA, provides in part that the board of county commissioners may "fix and determine the number of county deputy officers." Section 7-4-2401, MCA, also provides in part that every county officer "may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office." The effect of this statute will be discussed more fully below.

The conflict between the statutes is apparent: One appears to give complete control over assessment personnel to the State; the others appear to place that control with local government.

It is my understanding that the common practice and usage in the last 15 years has been to establish at the local level the number of deputy assessor positions. Thus, even though the State, through the Department of Revenue, has paid the salaries, the number of deputies has been under the control of the local county government. It is my opinion that this established practice and usage should continue unless and until the Legislature directs otherwise. The Montana Supreme Court has said:

> Under the case law, it is clear that, when faced with problems of statutory construction, the court must show deference and respect to the interpretations given the statute by the officers and agencies charged with administration.

State Dept. of Highways v. Midland Materials, 662 P.2d 1322, 1325 (Mont. 1983).

The second inquiry then is: Who on the local level, the county assessor or the board of county commissioners, establishes the number of deputies in the county assessor's office? The argument that the county assessor does is buttressed by section 7-4-2401(1), MCA, which reads in its entirety:

> Every county and township officer, except justice of the peace, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office. All compensation or salary of any deputy or assistant shall be as provided in this code.

However, the authority that the board of county commissioners establishes the number of deputy positions is found in section 7-4-2402, MCA:

> The board of county commissioners in each county is hereby authorized to fix and determine the number of county deputy officers and to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the

> judgment of the board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

These two statutes appear to be in direct conflict: the first granting unlimited discretion in the county officeholder to appoint deputies, the second providing that the board of county commissioners has the authority to create any additional deputy positions other than those provided by law.

In the recent decision of Spotorno v. Board of Commissioners of Lewis and Clark County, 687 P.2d 720 (Mont. 1984), the Montana Supreme Court referred to the two statutes cited above as being in "irreconcilable conflict." Spotorno, supra, at 722. The Court resolved a similar conflict between a county officeholder and the county commissioners by finding that the specific statute which applied to county auditors set a maximum number of deputies, but the authority of the board of county commissioners found in section 7-4-2402, MCA, was needed to actually fill the position. In this instance, there is no similar statute establishing the maximum number of deputies allowed a county assessor.

Careful attention to the wording of section 7-4-2401, MCA, and reference to several court cases which have interpreted it, show that it is not the broad grant of authority that it first appears. The wording of the statute in the Revised Codes of Montana, 1947, is perhaps clearer in conveying meaning:

> Every county and township officer, except county commissioner and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office, but no compensation or salary must be allowed any deputy except as provided in this code. [Emphasis added.]

§ 16-2409, R.C.M. 1947.

The underlined portion is that which was changed in recodification. However, the language in the Revised Codes of Montana is a stronger statement that while the officeholder may appoint deputies, those deputies are not to receive compensation except as allowed by the

board of county commissioners. That is the way the statute has been interpreted by several court decisions.

In State v. Cockrell, 309 P.2d 316 (Mont. 1957), the Montana Supreme Court gave this interpretation to the statute:

> Likewise without any order of the board of county commissioners, the county attorney may appoint as many deputies as necessary for the faithful and prompt discharge of the duties of his office, providing that no compensation or salary may be allowed therefor. R.C.M. 1947, § 16-2409.

Cockrell, supra, at 319.

In State v. Crouch, 227 P. 818 (Mont. 1924), the Supreme Court also approved the hiring of a deputy county attorney under the statute as long as he acted without pay.

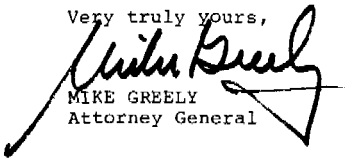
The implication of both of the court decisions referred to above is that where the deputy is to receive a salary, the statute granting an officeholder unlimited discretion to appoint deputies does not apply. That is also a reasonable interpretation of section 7-4-2401, MCA, particularly when the previous language of section 16-2409, R.C.M. 1947, is considered. Since the number of deputy assessors is not otherwise established by statute, there is no legal duty for the board of county commissioners to fund the position of deputy assessor. Consequently, the number of deputies resides with the county commissioners. See Spotorno, supra, at 722.

THEREFORE, IT IS MY OPINION:

1. As between the state and county governments, the authority to establish a deputy position and the commensurate authority to eliminate a deputy position in the office of the county reside with county government.

2. As between the county assessor and the board of county commissioners, the authority to add or eliminate a salaried deputy position resides with the board of county commissioners.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 24

COUNTIES - Authority under the Lakeshore Protection Act to regulate effects on natural scenic values;
LAND USE - Authority under the Lakeshore Protection Act to regulate effects on natural scenic values;
LOCAL GOVERNMENT - Authority under the Lakeshore Protection Act to regulate effects on natural scenic values;
NATURAL RESOURCES - Authority under the Lakeshore Protection Act to regulate effects on natural scenic values;
WATER AND WATERWAYS - Authority under the Lakeshore Protection Act to regulate effects on natural scenic values;
MONTANA CODE ANNOTATED - Sections 75-7-201 to 75-7-217, 75-7-201, 75-7-202, 75-7-204, 75-7-204(1), 75-7-207, 75-7-208;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 42 (1981), 40 Op. Att'y Gen. No. 47 (1984), 41 Op. Att'y Gen. No. 68 (1986), 41 Op. Att'y Gen. No. 86 (1986).

HELD: The Lakeshore Protection Act, §§ 75-7-201 to 217, MCA, requires a local governing body to consider the visual impact which any work subject to permitting under section 75-7-204, MCA, may have on natural scenic values where such values form the predominant landscape elements.

26 August 1987

Larry J. Nistler
Lake County Attorney
Lake County Courthouse
Polson MT 59860

Dear Mr. Nistler:

You have requested my opinion concerning the following question:

Is a local governing body required under the Lakeshore Protection Act, §§ 75-7-201 to 217,

MCA, to consider the visual impact of the reconstruction or alteration of an existing structure located on a shoreline upon natural scenic values?

I conclude that, because the reconstruction or alteration of the involved structure constitutes work for which a permit must be secured under section 75-7-204(1), MCA, a local governing body is required to consider natural scenic values in determining whether issuance of a permit is appropriate where such values form the predominant landscape elements.

The proposed construction involves the alteration of an existing structure through, inter alia, raising its roof line to a height in excess of 25 feet. The structure itself is located within 20 horizontal feet of the mean annual high-water elevation of a lake as defined in section 75-7-202(1), MCA. The proposed alteration will render the structure inconsistent with Lake County regulations generally limiting the height of lakeshore buildings to 25 feet. The purpose of the height limitation is to preserve the lakeshore from the obstruction of scenic views, and no dispute exists that such views are an essential element of the lake's visual and aesthetic values.

The county's regulations were issued pursuant to section 75-7-207, MCA, of the Lakeshore Protection Act (the Act). The Act, adopted in 1975, is intended to conserve and protect Montana's lakes. § 75-7-201, MCA; see generally 39 Op. Att'y Gen. No. 42 (1981). It requires that a person proposing "to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must secure a permit for the work" from the responsible local governing body. § 75-7-204(1), MCA. The term "lakeshore" is defined in section 75-7-202(2), MCA, to encompass "the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation." The Act further requires that local regulations favor issuance of a permit if, in addition to other considerations, "the proposed work will not during either its construction or its utilization ... create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements." § 75-7-208(5), MCA.

There can be no reasoned dispute that, if the proposed alteration is "work" within the scope of section 75-7-204(1), MCA, the county must consider its effect on natural scenic values in determining whether to permit a particular activity. It is equally clear that the proposed construction, as an expansion of an existing structure, constitutes "work" under such section. This latter conclusion is unavoidable since (1) the impact of the entire structure as altered must be considered in deciding if the course, current, or cross-sectional area of the lake or lakeshore has been modified or diminished; (2) the structure in its proposed form will affect the cross-sectional area of the involved lakeshore, and (3) the alteration itself directly contributes to such effect. Any other result allows incremental changes which render a structure, although initially consistent with valid local regulations, nonconforming. The Act obviously neither contemplates nor sanctions such a palpable evasion of its statutory purposes, and accepted rules of statutory interpretation require the term "work" in section 75-7-204(1), MCA, to be interpreted consonantly with those purposes. See, e.g., Montana Wildlife Federation v. Sager, 37 St. Rptr. 1897, 1907, 620 P.2d 1189, 1199 (1980) ("[a] statute will not be interpreted to defeat its evident object or purpose; the objects sought to be achieved by the legislation are prime consideration in interpreting statutes"); Dover Ranch v. County of Yellowstone, 187 Mont. 276, 284, 609 P.2d 711, 715 (1980) ("[i]t is a well-established rule of statutory construction that a statute be read as a whole and construed so as to avoid absurd results"); State ex rel. Florence-Carlton School District No. 15-6 v. Board of County Commissioners, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978) ("[l]egislation enacted for the promotion of public health, safety, and general welfare, is entitled to 'liberal construction with a view towards the accomplishment of its highly beneficent objectives'").

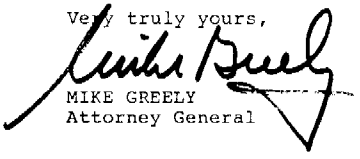
Finally, nothing in this opinion should be deemed as concluding that the height restriction in the county's regulations does, in the instant matter, protect natural scenic values. The validity of this restriction presents a largely factual issue inappropriate for resolution through an Attorney General's Opinion. Cf. 41 Op. Att'y Gen. No. 86 (1986) (determination of whether suitable access to property provided must be made by local governing body after consideration of all

relevant facts); 41 Op. Att'y Gen. No. 68 (1986) (determination of whether a sufficient number of signatures within a zoning protest area constituted a factual question best resolved by responsible city officials). Nonetheless, I reiterate that local governing bodies are expressly given authority under section 75-7-208(5), MCA, to determine whether natural scenic values may be prejudiced by a project subject to permitting. Unless not reasonably related to the preservation of such values, their decisions should be upheld. See 40 Op. Att'y Gen. No. 47 (1984) (Board of State Lands Commissioners possesses substantial administrative discretion in determining what elements should be included as part of a reclamation plan).

THEREFORE, IT IS MY OPINION:

> The Lakeshore Protection Act, §§ 75-7-201 to 217, MCA, requires a local governing body to consider the visual impact which any work subject to permitting under section 75-7-204, MCA, may have on natural scenic values where such values form the predominant landscape elements.

Very truly yours,



MIKE GREELY
Attorney General

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the Matter of the Application of)
LAKEWOOD PROPERTIES, INC., for a) DECLARATORY RULING
Declaratory Ruling.)

Lakewood Properties, Inc., a Montana Corporation, has petitioned the Human Rights Commission to declare an exception to the age discrimination provisions of the Montana Human Rights Act.

The petition was filed on August 5, 1985, and it seeks a determination of whether an exception should be granted for the purpose of limiting occupancy of a multi-family condominium project to those persons who are 55 years of age or older. Following notice to interested parties and notice to the general public a hearing was conducted on September 23, 1985. Lakewood Properties, Inc., appeared through its attorney, Joe Gerbase, Esq., and Kenneth Hollar, its president. The petition was supported by the testimony of Punky Darkenwald, Kenneth Hollar and Robin Grinsteiner. No interested parties appeared to request intervention in the case by testimony or otherwise. The findings of fact, conclusions of law and proposed order of the hearing examiner were adopted by the Human Rights Commission on November 22, 1985 as the Commission's final order pursuant to §2-4-621(3). The applicant filed exceptions to that Final Order on October 21, 1985, which exceptions were overruled by Commission order dated November 22, 1985. On May 14, 1986, the applicant filed an application for amendment to the final order. The Commission denied this request for amendment on July 1, 1986.

Having considered the hearing examiner's proposed order, the exceptions, and briefs of the party, oral argument on the exceptions, and request for amendment, the Commission now makes the following:

FINDINGS OF FACT

1. The petition for a declaratory ruling in this matter was filed on August 5, 1985.

2. The Commission issued the notice of hearing on August 14, 1985, and pursuant to the order of the Commission the Human Rights Division gave written notice of the hearing to 69 individuals and organizations, notice was published in the Montana Administrative Register on August 29, 1985 and a news release was made on September 6, 1985 and published in Montana's leading newspapers.

3. The applicant is a Montana corporation, having its principal place of business in Billings, Yellowstone County, Montana.

4. The applicant proposes to build 58 condominium units in the City of Billings.

5. The applicant proposes to place restrictions on the occupancy of the condominium units, and only those

persons who are 55 years of age or older would be permitted to reside in the project.

6. A person under the age of 55 would be allowed to reside with a resident of the project upon certification by a Medical Doctor the resident is in need of temporary or permanent care and upon authorization by the Board of Directors of a condominium association composed of purchaser members.

7. Reasonable visitation of the resident by family members, friends and others will be permitted.

8. In 1980, 23% of the population of Yellowstone County, Montana consisted of persons who were 50 years of age and older. Fourteen percent of the county's population (14,813) were in the age group 50 to 64, and 9% (9,841) were age 65 or older. The estimate for 1985 is that there are 26,600 (22%) persons in Yellowstone County who are age 50 and older, and it is projected that by 1990 there will be 29,200 (21%) persons who are 50 years of age or older. By the end of this decade the group composed of ages 50 through 64 will have increased 9.4% while those 65 and older will have increased by 32.1% Exhibit 1 which may be obtained from the Human Rights Division.

9. According to the American Association of Retired Persons (AARP) of Yellowstone County, the population grouping of those 60 and older will double in numbers by the year 2000, and those in the group of 75 and older will triple by that year. Exhibit 1 which may be obtained from the Human Rights Division.

10. According to the Billings Landlords Association there are presently 1,500 to 2,000 rental units available in Billings. Exhibit 1 which may be obtained from the Human Rights Division.

11. As of September, 1985, of those homes for sale and listed (excluding home owner private sales and unlisted homes), there were 2,214 active listings, with 1,152 houses, 122 condominiums and 143 multi-family dwellings for sale in Billings. Exhibit 1 which may be obtained from the Human Rights Division.

12. In Billings there are four major housing complexes for senior citizens. They are:

a. St. Johns Nursing Home, with 117 retirement units and 176 nursing units, and a waiting list from 2 - 3 months to one year;

b. Sage Towers, with 111 units, a six-month waiting period and a 10 year inactive waiting list;

c. Prairie Towers, with 108 units and a 6 to 9 month waiting period; and

d. Frazer project, which has 64 units and a waiting period of one year to 18 months.

Exhibit 2 which may be obtained from the Human Rights Division.

13. The Sage, Frazer and Prairie projects have an age restriction for occupancy of 62 years of age or older,

unless the individual is handicapped. Exhibit 2 which may be obtained from the Human Rights Division.

14. According to Punky Darkenwald, age has not been a factor in the residential housing market until the last five years. She finds that older persons want different kinds of units and are reticent to move into retirement homes. This is because many older people want to continue to be independent, drive their own cars and do their own shopping, and want housing which is less institutionalized. The elderly have problems in Billings in finding housing which is one-level in construction, accessible on the ground level without stairs and low-priced. There is no retirement community in the area, or in Montana for that matter, and there is a shortage of housing which fits these requirements.

15. Punky Darkenwald finds that there is no problem for an average family with children in finding housing in Billings, and that rather than hurt the housing market, the proposed project would open up available housing for young persons due to the sale of homes by older persons occupying the project.

16. Punky Darkenwald agrees that older persons are more frequently victims of crime, finds this to be a factor in the Billings area and notes the proposed project would serve the needs of older people, who have a heightened fear of crime victimization.

17. Kenneth Hollar, as the developer of the proposed project, has been conducting research into the feasibility and details of the project for approximately three years. His research has included consultations with the American Association of Retired Persons, participation in a seminar on retirement housing at New York University, and visitation to retirement communities in the New York City area, Pennsylvania, Colorado, Minnesota and Wisconsin.

18. The proposed project is a "R9600" zoning district, which means that housing must be residential and be on a lot with no less that 9600 square feet. Retirement homes are allowed in the district upon a special review.

19. The proposed project would be built on six acres of land in a residential neighborhood with a small grocery two blocks away, a church "across the road" and one two blocks away.

20. Kenneth Hollar indicates that the proposed project is designed strictly for the needs of senior citizens.

21. There would be 58 condominium units, to be built in four phases. Twelve units and the infrastructure would be built first, then upon the sale of 2/3 of the units a decision would be made on the construction of the other three phases, with the possibility of the remaining phases being completed at the same time.

22. Among the standards used for planning the project are those contained in Rosetta E. Parker, Housing for the Elderly, published by the Institute of Real Estate Management of the National Association of Realtors (1984).

This publication is a "handbook for managers," and it reviews the special housing needs of elderly persons, sponsorship and management, management of different kinds of housing projects related to various needs of senior citizens and financing strategies. Exhibit 3 which may be obtained from the Human Rights Division.

23. Kenneth Hollar says that while his plans have been based upon these standards to a large degree, there are aspects of the project which include both features found in the standards and those taken from other sources.

24. The applicant has submitted a listing of "amenities" for the proposed project in justification for the exemption sought, and it agrees these shall be in the project when built. The applicant represents to the Commission that it is committing that all the amenities will be included. Exhibit 5 which may be obtained from the Human Rights Division.

25. Among the amenities, features, conveniences and advantages which are offered as justification are those addressed to (1) security purposes; (2) health care purposes; (3) social needs, and (4) the general convenience of the residents. Exhibit 5 which may be obtained from the Human Rights Division.

26. The features designed for security include (1) an alarm system operable from the bathroom and bed; (2) secure fencing around the project; (3) ample exterior lights; (4) locking exterior doors at night; (5) security personnel on the property; and, (6) arrangements for those who would like to leave for long periods of time, e.g. to go south in winter. Exhibit 5 which may be obtained from the Human Rights Division.

27. The health care features include, (1) the buzzer system, (2) one-story construction with handicap access; (3) wide doors for wheelchairs; (4) grab bars in the tubs; (5) a central area with meal seating for all, to utilize "meals on wheels" programs; (6) wide hallways; (7) arrangements for the installation of metal bars in the bathrooms for those who need them; (8) a card system for people to hang a card on the doorknob upon retiring with a management check if the card is not removed the next morning; (9) yard, walk and drive maintenance for individual units and common areas; (10) lever-opening doors and other features so persons with special problems can operate normal housing features; (11) a sidewalk and shelters around the complex for exercise; and (12) a fire sprinkler system throughout the building.

28. Those features designed to accommodate the social needs of residents include a condominium association operated by the residents to engage in activities such as planning social events, advising management and group purchasing, as well as a common area which is central, enclosed and heated, with: (a) a solarium; (b) a lounge and recreation area; (c) tables for games, movies, group activities, etc.; (d) a small kitchen for coffee and pot luck suppers; (e) coffee and refreshment times; (f) a

library; and (g) birds and plants. The facility will be placed close to churches, one of which has non-denominational activities, pleasant landscaping, a central patio and individual ones for the units for gardening, grass, etc. Exhibit 5 which may be obtained from the Human Rights Division.

29. The features which are designed for the general convenience of the residents include (a) a battery of mailboxes inside the building, placed close to the lounge to encourage people to get dressed and go to the common area; (b) indoor garbage disposal; (c) central hot water heating for cost savings; (d) heat efficiency for cost savings; (e) periodic maintenance inspections for plumbing and fire danger; (f) individual garages and parking; and (g) access to two bus routes and a small grocery.

30. Each condominium purchaser would have absolute title to his or her unit and a 1/58th interest in the common areas. No leasing would be permitted, except in special hardship cases reviewed by the condominium residents' association. It is the opinion of Mr. Hollar that leasing lowers the quality of a condominium project.

31. The age 55 plus limitation is justified because:

a. The AARP, the City of Billings and the Montana Center for the Aged all use age 55 plus eligibility standards;

b. There are special security needs which senior citizens have, requiring a special project for them;

c. Continuity of relationships is important, i.e. not only are older persons able to associate with those of a similar age, but upon the death of a spouse or friend there are other members of the group who remain and who are available for support and relationships;

d. There is a need to preserve the independent life style choice of senior citizens, and a need to provide choice for either age-segregated or age-integrated purposes;

e. The age standard is necessary to serve as an age-segregated choice to serve special needs;

f. The applicant has been required to file for a zoning special review as a retirement home.

32. No spouse under age 55 would be permitted to reside in the project, and cohabitation by any person under age 55 would also not be permitted. An exception could be made only under the medical care exception proposed in the application.

33. Residents who wish to engage in professional work or other small business could do so subject to compliance with zoning restrictions (e.g. semi-retired lawyers, architects, accountants, etc. and craft workers).

34. Robin Grinsteiner, who has been director of the Billings Senior Citizen and Community centers for ten years, and who has a Bachelor of Science degree in psychology (sociology minor), supports the application and justifies the age 55 and over limitation because:

a. The City of Billings, uses the age 55 and over definition for its senior citizen programs;

b. The proposed amenities fit the needs of much of the senior population she sees, and many of those things are not available in the Billings, area;

c. Many older persons do not want to maintain a large home and yet would like the opportunity to do some gardening or outdoor work;

d. There is an "institutional stigma" attached to retirement and nursing homes, and there should be another option for people who want semi-independent living situations;

e. Senior citizens should have the opportunity to choose living arrangements suitable to them, ranging from complete independence in their own house, to semi-independent condominium arrangements, retirement homes and nursing homes; and age-integrated or age-segregated environments;

f. Socialization is often a problem with older persons, i.e. they may be isolated and not have the opportunity to meet and mingle with others. The proposed arrangements would have the effect of increasing socialization for those who otherwise might become isolated;

g. Security is a large element in the fears of senior citizens, and the proposed arrangement would provide confidence of freedom from criminal victimization;

h. There is a difference in life styles among senior citizens, and isolation from younger people may be necessary for special needs;

i. Many senior citizens prefer to live where they are free from traffic, with its dangers, noise and inconvenience.

35. Robin Grinsteiner further justifies the age 55 plus restriction because in the period of age from the mid to late 50s physical problems begin to manifest themselves and spouse death begins to occur. She says she has seen a lot of this in that age group, and because of the manifestation of ill health and spouse death there must be access to special social opportunities and services.

36. In specific response to a question regarding the arbitrary nature of the age 55 plus requirement, Ms. Grinsteiner said that such limitations are often necessary to prevent familial victimization of an older person. That is, with the absolute rule excluding under 55 residency, an older person can point to it for protection to preclude imposing family members from living with that person.

37. As a supplement and reinforcement to her testimony, Ms. Grinsteiner offered a journal article by Ron Toseland, Ph.D, Asst. Prof. of Social Work, San Diego State University, entitled, "More Than Just a Home," published in Western Gerontological Society Generations 20-21 (Winter 1979). Exhibit 6 which may be obtained from the Human Rights Division. The article indicates that those who are concerned with quality housing for older persons should

consider community environment as well as the physical dwelling unit. It states that both age-segregated and age-heterogeneous housing environments should be available to serve particular needs, and states:

> Psychosocial aspects of a community environment become increasingly important as a person ages. Role losses such as retirement, widowhood and death of friends leave older persons with few meaningful roles and decreased possibilities for social interaction and meaningful social relationships. A community environment which promotes contact with relatives, neighbors and friends is needed.

The article concludes that facilities with gathering places and common areas promote interaction and positive psychosocial environments.

38. Much of the scholarly work on residential age segregation endorses the social utility of that concept, and there is a majority view among gerontologists and sociologists that the exclusion of younger persons from retirement communities is socially acceptable. Mary Doyle, "Retirement Communities: The Nature and Enforceability of Residential Segregation by Age," 76 Michigan L. Rev. 64, 82 f. 75 (1977).

39. Studies suggest that the absence of children and younger adults is an important positive aspect of the age-homogenous environment because of reduced stress and protection from a loss of status. A 1974 survey of individuals living in "regular" and age-segregated communities in Arizona and using a "life satisfaction scale" shows that 75% of the retirement community residents were satisfied with retirement life, as compared with only 57% of those who lived in "normal" communities. Sociologists have tested and confirmed the hypothesis that the more age-segregated an area is, the more socially integrated are its residents, and this is due to social opportunity to interrelate and share experience. Id. 83-84 f. 77.

40. Most of the scientific literature on age-restricted communities indicates there are significant psychological, social and economic benefits from such communities. Those communities facilitate social interaction, provide potential replacements for those lost through death, provide a buffer for conflicts caused by the role expectations of younger persons and protect from crime. Older persons are the victims of violent crime in disproportionate numbers and susceptibility to crime can be reduced by removal from younger persons, who are often the ones who commit that kind of crime. G. M. Travalio, "Suffer the Little Children - But Not in My Neighborhood," 40 Ohio State B.J. 295, 318, 319 (1979).

41. Different persons react to aging in different ways. In a study of 87 males between 55 and 84, five major personality characterizations or types have been found: (1) mature, (2) rocking chair, (3) armored, (4) angry, and (5) self-hating. The first three are considered successful

agers. The study found there are many patterns for aging successfully with many different approaches to them. The disengagement theory of the social ecology of aging indicates that as an individual withdraws from society, (e.g. by loss of parents and friends, marriage of children, declining sexuality, retirement and the approach of death) and society withdraws from the individual, there is an adaptive process. For some this is an adaptive process which is healthy, but for others it is not. While there are many ways to successfully or unsuccessfully age, depending upon previous lifestyle, an impoverished social environment may have deleterious effects on functioning, and it can be a depriving one with few challenges and few expectations. Lee Willerman, The Psychology of Individual and Group Differences 427, 430-431 (1979).

42. At hearing the conclusions of findings 38 through 41 were presented to Robin Grinsteiner for her commentary, and she indicated on the basis of her review of the literature of gerontology and her experience that they were correct statements of the scientific aspect of aging.

43. The witnesses at the hearing, who from their experience and work are in a position to know, stated that there are no age-homogeneous retirement communities of this nature in Montana, and that individuals who desire to live in such communities are compelled to move to another state, most notably Arizona.

44. The proposed age-restricted complex has been well-planned, taking the special needs of older persons who are semi-independent into account, and it is specifically designed to meet those special needs.

Based upon the foregoing findings of fact are the following:

CONCLUSIONS OF LAW

1. The Montana Human Rights Commission has jurisdiction with respect to this petition for a declaratory ruling under §49-2-401, MCA.

2. The venue for this matter lies in Yellowstone County, Montana. §49-2-505(2), MCA.

3. Fair and adequate notice of the hearing in this matter was given in that:

a. The Human Rights Division identified all potential interested parties who could be reasonably identified as having an interest in the subject matter of this petition and gave them actual written notice of the hearing;

b. Notice was properly published in the Montana Administrative Register;

c. A news release is a proper method of giving notice to the general public, and the hearing was given widespread publicity in the Montana news media with an opportunity for interested parties to know of and participate in the hearing.

4. "'Age' means number of years since birth." §49-2-101, MCA.

5. Section 49-2-305(1), MCA prohibits discrimination on the basis of age in the sale, lease or rental of housing, except when the age distinction is based upon reasonable grounds.

6. Section 49-2-305(3), MCA prohibits any notice, statement or advertisement which indicates an age preference, limitation or discrimination as is prohibited by the previous subsection.

7. An exemption to the foregoing requirements may be granted by the Montana Human Rights Commission upon a finding that reasonable grounds, strictly construed, for granting an exemption exist. §49-2-401, MCA.

8. The burden is upon the petitioner to demonstrate that an exemption should be granted. §49-2-401, MCA.

9. The proposed condominium project having age-related restrictions of allowing only those who are age 55 and older, absent medical need, to purchase and occupy condominium units is facially discriminatory.

10. In the City of Billings and in Yellowstone County there is a shortage of multi-occupant residential housing designed to meet the needs of older persons.

11. There are long periods of time in which an applicant for such housing must wait before occupancy.

12. The nature of the available housing for older persons is such that many individuals feel it does not meet their special needs, i.e. ground-level access, adaptable to a semi-independent lifestyle and not having the "stigma" of the nursing home or retirement home.

13. There is a shortage of housing in Billings which meets the needs of semi-independent senior citizens, i.e. ground access, one level and comparatively inexpensive.

14. The applicant has met its burden under §49-2-401, MCA to demonstrate an exemption should be granted because:

a. The project has been carefully considered with the needs of senior citizens who desire semi-independent living in mind;

b. The amenities, features, conveniences and advantages offered by the proposed plan are based upon nationally-recommended standards and they serve the special needs and conditions of the group under consideration;

c. The granting of the proposed exemption would not adversely affect housing opportunities for those not included in the restriction, and it would have the effect of expanding the housing opportunities of younger persons with families;

d. The proposed limitations are made in good faith and they have the support of social science literature.

15. The proposed exemption has the effect of granting special privileges or opportunities to one age group while excluding the classifications of those under 55 and those with children under 55 who reside with them, and such age classifications are facially discriminatory under Montana law.

16. In using the term "reasonable grounds" in §§49-2-305 and 49-2-401, MCA the Montana Legislature intended that there may be special measures of protection which are designed to aid depressed groups, classes or categories of individuals, so long as any distinction or differentiation is not arbitrary, invidious or unjustified or one not wanted by those made subject to them.

17. "Strict construction" for the purposes of these statutes means limiting the application of the statute by the words actually used, i.e. "reasonable grounds." Sutherland Statutory Construction §58.02.

18. The applicant has shown that there is a shortage of housing for older persons and that there are no retirement facilities, as such, in Montana which provide the opportunity for older persons to live in a semi-independent fashion.

19. Given the factors found in the findings of fact, the proposal is a measure of protection designed to aid a particular group of persons with special needs.

20. The proposal for exemption is not arbitrary, invidious or unjustified, and it provides advantages to benefit those within the protected group which are wanted by them.

21. The proposed exemption would be undermined if the age limitation was not allowed.

22. Those individuals that would be excluded from the project would not suffer from the special benefit granted older persons in that there is sufficient housing for younger persons and those with minor children in the Billings housing market.

23. The special protection of the inhabitants of the proposed project requires a specific age limitation.

24. It is not possible for the petitioner to adjust residency requirements or find an alternative practice to minimize a clash of interests between the age groups.

25. There is no reasonable alternative to the proposed plan.

26. While age restrictions are reasonable with respect to prospective buyers, situations may arise in which an eligible resident may wish to marry or cohabit with a man or woman who is not 55 years of age. Due to public policy which encourages freedom of marital or personal association and discourages discrimination due to marital status, such a practice should be allowed as long as the disruptive activities which are the reason for the age limitation do not exist.

27. The law is with the petition and it should be granted.

ORDER

Based upon the foregoing findings of fact and conclusions of law the following order is made:

1. The petition should be granted to allow an exemption to §49-2-305, MCA as it applies to the sale and advertisement of condominium units.

2. The petitioner shall be permitted to advertise and sell condominium units, limiting such sales to prospective purchasers who are age 55 or older, and limiting occupancy of condominium units to those who are 55 years of age and older.

3. The petition is granted upon the restriction that where any resident requires care on a temporary or permanent basis and a Doctor of Medicine or other authorized medical care provider certifies in writing that the person is in need of such care, a person under the age of 55 years may reside with that person upon the approval of the Board of Directors of the condominium association. A further restriction shall be that no such request may be unreasonably denied.

4. The petition is granted upon the further restriction that should any resident exercise the right of free association by marriage or cohabitation in a relationship, such spouse or other person may reside with the resident, subject to reasonable rules regarding noise or disruption of the community.

5. The petition is also granted with respect to other aspects of real property development and sale, e.g. credit and financing transactions under §49-2-306, MCA.

6. The petition is further granted upon condition that the project be built and managed in substantial compliance with the amenities, features, conveniences and advantages of the Petitioner's Exhibit 5, which is incorporated into this order by reference.

DATED this 22nd day of November, 1985.

HUMAN RIGHTS COMMISSION
Margery H. Brown, Chair

By: Anne L. MacIntyre
Anne L. MacIntyre, Administrator
Human Rights Division

Certified to the Secretary of State this 31st day of August, 1987.

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 June 30, 1987. This table includes those rules adopted during the period June 30, 1987 through September 30, 1987 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1987, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1987 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

I	Blind Vendors' Bidding Preference, p. 1730, 250
I-V	and other rules - Use of State's Telecommunications Systems and Facilities, - Approval of Installations, Modifications or Removal of Telecommunications Systems - Use of Systems, p. 1229
I-VII	Overtime and Compensatory Time in Lieu of Overtime Compensation, p. 272, 769
2.5.201	and other rules - Purchasing - Definitions - Department Responsibilities - Delegation of Purchasing Authority - Competitive Sealed Bids and Proposals - Small Purchases of Supplies and Services, p. 799
2.5.201	and other rules - Contracting for Supplies and Services, p. 1151
2.21.804	and other rules - Sick Leave Fund, p. 733, 1202
2.21.1501	and other rules - Administration of Compensatory Time for Employees Exempt from the Federal Fair Labor Standards Act (FLSA), p. 278, 767
2.21.6706	and other rules - Employee Incentive Award Program, p. 505, 1337
(Public Employees' Retirement Board)	
I-III	and other rules - Salary and Service Credits for Retirement Systems - Qualifying Out-of-state Service in PERS - Purchasing Military Service in the Sheriffs' Retirement System - Granting Full

(Board of Dentistry)
8.16.602 and other rules - Allowable Functions for Dental Hygienists and Dental Auxiliaries - Prohibition - Permit Required for Administration of Facility - Minimum Qualifying Standards - Facility Standards, p. 1654, 155
(Board of Hearing Aid Dispensers)
8.20.401 and other rules - Traineeship Requirements and Standards - Fees - Certified Hearing Aid Audiologists, p. 128, 371
8.20.401 Traineeship Requirements and Standards - "Trainee" Designation, p. 514
(Board of Horse Racing)
8.22.501 and other rules - Definitions - General Requirements - Claiming, p. 353
8.22.1804 Emergency Amendment - Twin Trifecta, p. 586
8.22.1804 Twin Trifecta, p. 739
(Massage Therapists)
8.26.101 and other rules -Board Organization - Procedural Rules - Substantive Rules, p. 356, 697
(Board of Morticians)
I and other rules - Transfer or Sale of Mortuary License - Board Meetings and Fee Schedule, p. 1251
8.30.407 Fee Schedule, p. 194, 477
(Board of Nursing)
I and other rules - Verification of License to Another State - Application for Recognition - Certificate of Nurse-Midwifery - Renewals, p. 1253
(Board of Nursing Home Administrators)
8.34.403 and other rules - Board Meetings - Public Information - Examinations - Continuing Education - Fee Schedule - Reinstatement, p. 223, 1206
(Board of Pharmacy)
8.40.404 and other rule - Fee Schedule - Fees, p. 227, 478
(Board of Professional Engineers and Land Surveyors)
8.48.1105 Fee Schedule, p. 810
(Board of Private Security Patrolmen and Investigators)
8.50.423 and other rules - Definitions - Temporary Employment Without Identification Card - Resident Manager and Qualifying Agents - Identification Pocket Card - Insurance Requirements - Termination of Business - Fee Schedule - Assessment, p. 629
(Board of Realty Regulation)
I Continuing Education, p. 1545, 157
8.58.411 Fee Schedule, p. 1256
8.58.415A Continuing Education, p. 634
8.58.419 Suspension or Revocation - Violation of Rules - Unworthiness or Incompetency, p. 229, 588
(Board of Social Work Examiners and Professional Counselors)
8.61.404 and other rules - Fee Schedule - Hours, Credits

and Carry Over - Accreditation and Standards - Reporting Requirements - Noncompliance - Annual License Renewal, p. 231, 479

(Passenger Tramway Advisory Council)

8.72.101 and other rules - Tramway Rules - ANSI Standards, p. 1159

(Bureau of Weights and Measures)

8.77.101 Scale Pit Clearance, p. 196, 589

(Milk Control Bureau)

8.79.301 Licensee Assessments, p. 56, 310

(Board of Milk Control)

8.86.301 Formula for Fixing the Class I Producer Price, p. 235

8.86.301 Special Wholesale Prices and Formulas for Fixing the Class II and III Producer Prices, p. 402, 881

(State Banking Board)

I Emergency Rule - Chartering of State Banks Without Notice, p. 1065

(Local Government Assistance Division)

I Administration of the 1987 Federal Community Development Block Grant (CDBG) Program, p. 357, 1207

I-III Approval and Administration of Contracts of Audits of Local Government Units, p. 1745, 480

(Montana Economic Development Board)

8.97.308 Rates, Service Charges and Fee Schedule - Rate Reduction Fee, p. 1998, 202

8.97.402 and other rules - Criteria for Determining Eligibility - Bonds and Notes of Board - Loan Loss Reserve Account for the Instate Investment Fund - Application and Financing Fees, Costs and Other Charges - Taxable Revenue Bond Program - Terms, Interest Rates, Fees and Charges - Application Procedure to Become a "Certified" Montana Capital Company - Application Procedure to Become a "Qualified" Montana Capital Company, p. 636, 1070

8.97.406 Economic Development Linked Deposit Program, p. 405, 1210

(Hard-Rock Mining Impact Board)

8.104.203A Definitions, p. 1161

(Aeronautics Division)

8.106.602 Liability Insurance Requirements, p. 812, 1344

(Board of Housing)

8.111.202 Meetings of the Board of Housing, p. 240, 483

(Video Gaming Control Bureau)

I-III and other rule - Emergency Rules - Licensing Video Gaming Machines, p. 1067

I-VIII and other rules - Licenses and Software Specifications for Video Gaming Machines - Policy - Definitions - Application for License - Licensee Qualifications - Denial - Judicial Review - Quarterly Reporting Requirements -

Record Retention Requirements - General Specifications for Machines - Software Specifications - Restrictions - Prohibited Machines - Possession of Unlicensed Machines - Location - Approval by Department - Repairing Machines - Inspection and Seizure - Transportation - Registration of Manufacturers, Suppliers or Distributors, p. 1258

(Montana State Lottery Commission)

I-XXXIII Operations of the Montana State Lottery Commission, p. 407, 883

8.127.1201 Prizes, p. 1279

EDUCATION, Title 10

(Superintendent of Public Instruction)

I-III Special Education Transportation, p. 1003, 1383

(Board of Public Education)

I Student Transportation for the Montana School for the Deaf and Blind, p. 1372

10.55.405A Gifted and Talented, p. 130, 591

10.57.102 and other rules - Definitions - Correspondence, Extension and Inservice Credit - Reinstatement - Class 1 Professional Teaching Certificate - Class 2 Standard Teaching Certificate - Class 3 Administrative Certificate, p. 130, 591

10.57.601 and other rules - Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action - Notice and Opportunity for Hearing Upon Determination that Substantial Reason Exists to Suspend or Revoke Teacher or Specialist Certificate - Hearing in Contested Cases - After Hearing by Member of Board/Hearing Examiner/Board of Public Education - Appeal from Denial of a Teacher or Specialist Certificate - Considerations Governing Acceptance of Appeal - Hearing on Appeal, p. 515, 1211

10.64.301 and other rules - Minimum Standards for School Buses, p. 1752, 104, 158

(Montana State Library Commission)

10.101.101 and other rules - Montana Library Services Advisory Council - Library Services and Construction Act (LSCA) Grants, p. 302, 741

10.101.203 and other rules - Organizational and Procedural Rules - General Policy and Public Library Development, p. 283

FAMILY SERVICES, Department of, Title 11

I-III Designation of Local Services Areas and Local Youth Services Advisory Councils, p. 1382

I-VIII Confidentiality of Case Records Containing Reports of Child Abuse and Neglect, p. 949

I-VIII	Temporary Rules - Youth Placement Committees, p. 1163
I-VIII	Youth Placement Committees, p. 1169
I-XIII	Procedures for Rulemaking - Declaratory Rulings - Contested Case Hearings, p. 1374
46.5.922	Child Day Care Centers, p. 1175

FISH, WILDLIFE AND PARKS, Department of, Title 12

I	Exclusion of Certain Flotation Devices from the Statutory Definition of "Vessel", p. 307, 889
I-VII	Collection of Fees for Costs Associated with Preparation of Environmental Impact Statements, p. 359, 886
I-VIII	Rules Regulating Fishing Contests, p. 959
12.6.701	Personal Flotation Devices and Life Preservers, p. 308, 1072
12.6.703	Limit the Requirements For Fire Extinguishers on Small Motorboats and Vessels, p. 363, 1073
12.6.901	Establishing a No Wake Speed on Portions of Harrison Lake, p. 242
12.6.901	Prohibiting Motor or Engine Operated Vessels on the Bighorn River from Afterbay Dam to the Bighorn Access Area, p. 244, 1480
12.6.901	Water Safety Regulations - Closing Crystal Lake in Fergus County to Motor-Propelled Water Craft and to Establish a No-Wake Speed Limit on Portions of Lake Kookanusa on Cripple Horse Bay, p. 955

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

I	Licensing and Certification of Hospitals - Hospital Protocols for Organ Procurement, p. 1384
I-XLIX	and other rules - Control Measures to Prevent the Spread of Communicable Diseases, p. 816, 964
16.6.301	and other rules - Records and Statistics - Birth Certificates - Marriage Applications - Death and Fetal Death Certificates, p. 997, 1481
16.8.704	and other rules - Air Quality - Testing and Air Quality Permits, p. 2000, 159
16.8.820	Air Quality Standards for Sulfur Dioxide, p. 742, 815, 1482
16.8.937	and other rules - Amendment of Federal Agency Rule Presently Incorporated by Reference, p. 744
16.20.210	Frequency of Bacteriological Sampling, p. 58, 311
16.32.101	and other rules - Review of Certificates of Need for Health Care Facilities, p. 641, 1074
16.35.102	and other rules - End-stage Renal Disease - Application Procedures - Benefit Periods - Non-financial Eligibility Requirements - Eligible Services and Supplies - Non-eligible Services - Conditions on Paying Claims, p. 1387

16.44.102 Hazardous Waste - Consolidation and Updating Incorporations by Reference of Federal Agency Rules Contained in Chapter 44 of Title 16 of the Administrative Rules of Montana, p. 1, 203
16.44.102 and other rules - Hazardous Waste Management, p. 417, 775
16.44.103 and other rules - Hazardous Waste Management - Permitting - Counting Hazardous Wastes - Requirements for Recycled Materials - Incorporating Appendices - Redefining Generator Categories - Creating Requirements for Conditionally Exempt Small Quantity Generators - Registration and Fee Requirements for Generators and Transporters - Accumulating Hazardous Wastes - Annual Reporting, p. 60, 255

HIGHWAYS, Department of, Title 18

I Special Vehicle Combinations, p. 747, 1484
I Display of Monthly or Quarterly GVW Fee Receipts, p. 1000, 1483

INSTITUTIONS, Department of, Title 20

20.14.106 Admission Criteria to the Montana Center for the Aged, p. 246, 484
20.25.101 and other rules - Revision of the Board of Pardons Rules, p. 753

JUSTICE, Department of, Title 23

I-XIX Implementation of the Victims Compensation Act by the Crime Victims Unit and Division of Crime Control, p. 1391
23.3.118 and other rule - Vision Tests - Vision Standards for Driver Licenses, p. 1002
23.3.133 and other rules - Licensing of Commercial Motor Vehicle Operators, p. 1399

LABOR AND INDUSTRY, Department of, Title 24

I-VIII New Horizons Program, p. 1005, 1486
I-XII Mediation of Workers' Compensation Disputes, p. 454, 890
24.16.9007 Annual Adoption of Prevailing Rate of Wages, p. 1177
(Human Rights Commission)
I-IX Sex Equity in Education under the Montana Human Rights Act, p. 1663, 312
24.9.210 and other rules - Procedures for Investigation and Conciliation of Complaints Filed with the Commission - Pre-hearing Procedures, p. 431, 1088
24.9.1107 Age Discrimination in Housing, p. 1094

(Workers' Compensation Division)

I Temporary Rule - Impairment Rating Panel, p. 660, 1084

I Temporary Rule - Distribution of Benefits from the Uninsured Employers Fund, p. 662, 1083

I Time Limits for Administrative Review and Contested Case Hearings, p. 668, 1212

I-II Temporary Rules - Rehabilitation, p. 664, 1086

24.29.705 and other rule - Corporate Officer Coverage Under the Workers' Compensation Act, p. 670

24.29.3801 Attorney Fee Regulation, p. 2050, 323

STATE LANDS, Department of, Title 26

I and other rules - Federal Farm Compliance Program - Fee Schedule - Definitions - Rental Rates - Lease and License Reports and Renewal - Assignments - Subleasing - Pasturing Agreements - Cancellation of Lease or License - Mortgages and Pledges, p. 1281

LIVESTOCK, Department of, Title 32

32.3.104 Subject Diseases or Conditions, p. 1293

32.3.216 Equine Quarantine Stations, p. 1288

32.3.219 Protecting Montana Swine Industry Against Importation of Disease, p. 1291

32.3.401 and other rules - Clarifying Authority for Control of Brucellosis - Affected Herd Owner Rights and Obligations, p. 1295

32.8.202 and other rule - Milk Freshness Dating - Clarifying Responsibilities, p. 88, 698

MILITARY AFFAIRS, Department of, Title 34

I-XXII Montana State Veterans Cemetery, p. 2053, 776

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Natural Resources and Conservation)

36.12.101 and other rules - Definitions - Forms - Application and Special Fees - Issuance of Interim Permits, p. 857

36.20.101 and other rules - Weather Modification Regulation, p. 863

(Board of Water Well Contractors)

36.21.415 and other rules - Fee Schedule - Monitoring Well Constructor Licenses, p. 1180

(Board of Oil and Gas Conservation)

36.22.501 and other rule - Location Limitations - Plugging and Abandonment Procedures of Seismic Shot Holes, p. 520, 1095

PUBLIC SERVICE REGULATION, Department of, Title 38

38.3.704 and other rule - Filing by Motor Carriers of Proof of Insurance, p. 874, 1345
38.4.120 and other rules - Intrastate Rail Rate Proceedings, p. 135, 699

REVENUE, Department of, Title 42

I Motor Fuel Tax - Cardtrol Compliance and Administration, p. 1008
I Exempt Retirement Limitation, p. 1186
I Income Tax Deduction for Household and Dependent Care Expenses, p. 1188
I Capital Gain Exclusion, p. 1190
I 10% Income Tax Surtax, p. 1192
I Motor Fuel Tax Bonds - Problem Accounts, p. 1196
I Severance Tax - Stripper Exemptions, p. 1198
I Temporary Rule - Severance Tax - Stripper Exemption in Excess of Actual Production, p. 1200
I-III Withholding Tax-Lien-Affidavit, p. 1194
I-IV Operating Liquor Stores, p. 1183
I-V Corporation License Tax Exemption for Research and Development Firms, p. 1450
I-X Tertiary Production for Natural Resource and Corporations Tax, p. 1422
I-X Dangerous Drug Tax Act, p. 1433
I-XI Temporary Rules - Accommodation Tax, p. 674, 1097
I-XI Temporary Rules - Light Vehicle and Motorcycle Tax, p. 678, 1106
I-XI Accommodations Tax for Lodging, p. 1020
I-XIII Light Vehicle and Motorcycle Tax - Personal Property Tax, p. 1014
I-XIV Administrative Income Withholding for Child Support, p. 90, 328
42.11.104 Retail Liquor/Wine Price Restructuring, p. 1952, 705
42.11.201 and other rule - Montana Liquor Vendors and Representatives, p. 1441
42.12.128 and other rule - Catering Endorsements - Permissible and Prohibited Activities Regarding Selling Beer in Grandstands, p. 876, 1491
42.13.105 Applicability of Licenses - Premises Defined - Gold Course Exception - Portable Satellite Vehicle, Movable Devices, p. 756
42.13.222 Beer Wholesaler and Table Wine Distributor Recordkeeping Requirements, p. 754, 1213
42.15.311 and other rule - Withholding from Retirement Plan Benefits, p. 1430
42.17.105 Temporary Amendment - Computation of Withholding, p. 672, 1112
42.17.105 Computation of Withholding - Income Tax, p. 1029
42.17.113 Reporting Requirements for Withholding Taxes,

SECRETARY OF STATE, Title 44

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46