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MONTANA ADMINISTRATIVE REGISTER

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**1987 ISSUE NO. 23
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PAGES 2213-2276**



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ARCHITECTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.6.413 FEE SCHEDULE
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 9, 1988, the Board of Architects proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-212 and 8-213, Administrative Rules of Montana)

"8.6.413 FEE SCHEDULE

(1) ARE examination and re-examination:

(a) Division A - Pre-Design	\$59.00	\$36.00
(b) Division B - Site Design	\$52.00	\$78.00
(c) Division C - Building Design	\$86.00	\$96.00
(d) Division D/F - Structural	\$28.00	\$30.00

Technology -- General and Long

Span

(e) Division E - Structural <u>Techno-</u>	\$21.00	\$12.00
<u>logy -- Lateral Forces</u>		

~~(f) -- Division F --- Structural --- Long~~

Span

(g) Division G - Mech/Plbg/Elec/Life	\$29.00	\$36.00
Safety		

(h) Division H - Materials and Methods	\$35.00	\$36.00
--	---------	---------

(i) Division I - Construction Docu-	\$41.00	\$36.00
ments and Services		

(2) through (7) will remain the same."

Auth: 37-1-134, 37-65-204, MCA Imp: 37-65-304(1), MCA

REASON: Division D & F have been merged into a single division beginning with the 1988 administration of the ARE (Architectural Licensing Examination). The amended fee schedule sets examination fees commensurate with examination program area costs.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 7, 1988.

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 Board of Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 7, 1988.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. No licensees are affected by the change. However, the fee change will impact approximately 20 to 25 examination candidates per year.

BOARD OF ARCHITECTS
ROBERT C. UTZINGER, PRESIDENT

BY:

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

Certified to the Secretary of State, November 30, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the proposed amendment of a rule pertaining to unprofessional conduct, repeal of a rule pertaining to code of ethics and the adoption of new rules pertaining to disciplinary actions and evaluations-consultations	)	NOTICE OF PROPOSED AMENDMENT OF 8.12.607 UNPROFESSIONAL CONDUCT, THE REPEAL OF 8.12.610 CODE OF ETHICS, AND ADOPTION OF NEW RULE I. DISCIPLINARY ACTIONS AND II. INDEPENDENT MEDICAL EVALUATIONS-CONSULTATIONS
NO PUBLIC HEARING CONTEMPLATED		

TO: All Interested Persons:

1. On January 9, 1988, the Board of Chiropractors proposes to amend, repeal and adopt the above-stated rules.
2. The proposed amendment of 8.12.607 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-359 and 8-360, Administrative Rules of Montana)

"8.12.607 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of section 37-12-321(14), MCA, the board defines "conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public" as follows:

(1) Any person who is practicing chiropractic in Montana from and after the date of adoption of these rules of procedure and before receiving a license from the board of chiropractors shall be liable to the penalties as prescribed in the Chiropractic Act.

(2)(1) Constructive educational publicity is encouraged. Licensees must refrain from using or causing to be used advertising matter which contains misstatements, falsehoods, misrepresentations, distorted and fabulous statements relative to cures, or in the wording of such advertisement any matter which may in any way reflect against a fellow licensee. Personal advertising in any media which deals with the particular abilities, features or accomplishments of the individual licensee or which either directly or by implication makes promise of a cure, offers free examination or consultations, claims special techniques or methods without first presenting documentation showing sufficient training in the specialty area to the board, or implies superiority, in any manner over other licensees or other licensed health sciences shall be prima facie evidence of unethical conduct. Business type announcements should be limited to who, what and where.

(2) Engaging in inappropriate verbal sexual behavior, sexual relations with a patient, sexual misconduct, sexual exploitation or a sex offense, when such act, or solicitation thereof, is related to the practice of the licensee.

(3) Violation of any state or federal statute or administrative rule regulating the practice of chiropractic

including any statute or rule defining or establishing standards of patient care or professional conduct or practice.

(4) Using, in any advertising, the terms, 'at no cost', 'free', 'reduced', or any other terms of similar inference without including in such advertising the following statement: 'THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY OR CANCEL PAYMENT OR BE REIMBURSED FOR PAYMENT FOR ANY SERVICE, EXAMINATION OR TREATMENT WHICH IS PERFORMED AS A RESULT OF, OR WITHIN 72 HOURS OF, RESPONDING TO THIS ADVERTISEMENT OF FREE OR REDUCED SERVICE, EXAMINATION OR TREATMENT'. This statement must appear in capital letters and be distinguishable in written advertising and audibly stated on television or radio advertising.

(5) Engaging in, or being involved in, 'fee splitting' in which a licensee gives or receives payments or fees in referral of a patient to any professional.

(6) Soliciting or accepting, for services rendered, assigned payments from any third-party payer as payment in full, if the effect is to eliminate the need of payment by the patient of any required deductible or co-payment applicable on the patient's health benefit plan, except as hereinafter provided. Collecting fees or charges for services or treatment different from the fee or charge the licensee submits to a third party payer for that service or treatment, except as hereinafter provided. These rules are intended to prohibit offering the above listed practices to the public as well as the actual practices, except that, in instances where the intent is not to collect an excessive remuneration from the third-party payer, but rather to provide services at a reduced rate to a patient unable to afford the deductible or co-payment, the services may be performed for a lesser charge or fee. The burden of proof for establishing that this is the case shall be on the licensee.

(7) Submit to any third-party payer a claim for a service or treatment that contains a fee or charge greater than the customary or usual fee or outside the range of fees, the licensee customarily or usually charges for that type of service or treatment when rendered without third-party reimbursement.

(8) Engaging in, or providing services or treatments which are in excess of those warranted by either the patients' condition or the practice technique, methodology or modality applied and are not consistent with seriousness of diagnosis.

(9) Participating in, or conducting, research projects on patients or the public without first obtaining written authorization from the board.

(10) Referring a patient to a health care practitioner located in Montana who is not licensed or not regulated by the state of Montana.

(11) Defame another chiropractor by falsely imputing dishonorable conduct or by falsely disparaging his or her business or practice methods.

(12) Failing to make reports and records available to the board upon request, failure to cooperate with a board

investigation or knowingly giving false information to the board."

Auth: 37-12-201, MCA Imp: 37-12-321, MCA

REASON: The board is proposing these unprofessional conduct rules to cover any sexual misbehavior in the practice of chiropractic, to provide guidelines in advertising specialties where specialties do not exist and the board feels they must protect the public from misrepresentations. The board is proposing rules on areas of insurance due to the number of allegations received from insurance companies and worker's compensation division regarding possible abuse in filing claims and in the persons performing review of the insurance claims that may be using their position in an arbitrary manner.

3. The board is proposing to repeal ARM 8.12.610 Code of Ethics. This rule can be found on page 8-360, Administrative Rules of Montana for reference.

REASON: Reference to the Code of Ethics of the Montana Chiropractic Association is being proposed to be repealed as the proposed Unprofessional Conduct rules will cover everything that was in the Code of Ethics.

4. The proposed new rules will read as follows:

"I. DISCIPLINARY ACTIONS (1) The board reserves the discretion to take appropriate disciplinary action provided for in sections 37-1-136, 37-12-322, 37-12-323, MCA, against a licensee who has violated any law or rule of the board and to decide on a case-by-case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

(a) the seriousness of the infraction;
(b) the detriment to the health, safety and welfare of the people of Montana; and
(c) past or pending disciplinary actions relating to the licensee;

(2) The board may impose one or more of the following sanctions in appropriate cases:

(a) revocation of a license;
(b) suspension of its judgment of revocation on terms and conditions determined by the board;
(c) suspension of the right to practice for a period not exceeding 1 year;
(d) placing a licensee on probation;
(e) reprimand or censure of a licensee;
(f) limitation or restriction of the scope of the license and the licensee's practice;
(g) deferral of disciplinary proceedings or imposition of disciplinary sanctions; or
(h) ordering the licensee to successfully complete appropriate professional training.

(3) When a license is revoked or suspended, the licensee must surrender the license to the board."

Auth: 37-1-136, 37-12-322, MCA Imp: 37-1-136, 37-12-322, 37-12-323, MCA

"II. INDEPENDENT MEDICAL EVALUATIONS-CONSULTATIONS

(1) Engaging in 'insurance consultation' or 'independent medical evaluations' involving the review of other licensees' treatment, charges or practices, without registering with the board prior to commencement of such activity, listing the name(s), addresses, and contact persons of the insurance company."

Auth: 37-12-201, MCA Imp: 37-12-321, MCA

REASON: The disciplinary action rule (I.) are being proposed by the board to allow other means of license discipline in addition to those allowed in 37-12-321, MCA.

REASON: The board is proposing this rule due to the number of licensees conducting evaluations and consultations on insurance claims and using their position in an arbitrary manner. The board feels if they were registered with the board many problems could be eliminated which would protect the public in having claims processed in a speedy manner. There have been instances of the consultant holding up a review or claims evaluation against a licensee with no thought to the patient's concern or credit rating.

5. Interested persons may submit their data, views or arguments concerning the proposed amendment, repeal and adoption in writing to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 7, 1988.

6. If a person who is directly affected by the proposed amendment, repeal 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 Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 7, 1988.

7. If the Board receives requests for a public hearing on the proposed amendment, repeal and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, repeal 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. Ten percent of those persons directly affected has

-2219-

been determined to be 15 based on the 153 licensees in Montana.

BOARD OF CHIROPRACTORS
DEBBIE SORENSON, D.C.
PRESIDENT

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

Certified to the Secretary of State, November 30, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.42.403 FEES
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 9, 1988, the Board of Physical Therapy Examiners proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1206, Administrative Rules of Montana)

"8.42.403 FEES (1) The fees shall be as follows:

(a) and (b) will remain the same.

(c) Renewal

~~\$75.00~~ \$50.00

(d) through (2) will remain the same."

Auth: 37-1-134, 37-11-201, MCA Imp: 37-11-308, MCA

REASON: In late 1983 the Board established fees somewhat higher than program area costs to allow the earmarked revenue account to accumulate a safety reserve in case of unanticipated cost increases. The Board now believes that the account has an adequate safety reserve and that a decrease in the renewal fee is now warranted.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Physical Therapy Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 7, 1988.

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 Board of Physical Therapy Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 7, 1988.

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

-2221-

directly affected has been determined to be 23 based on the 230 licensees in Montana.

BOARD OF PHYSICAL THERAPY
EXAMINERS
BARBARA M. REED, P.T., CHAIRMAN

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

Certified to the Secretary of State, November 30, 1987.

BEFORE THE MONTANA STATEHOOD
CENTENNIAL OFFICE OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING ON
of Rules 30.3.102 and 30.3.104	)	PROPOSED AMENDMENT OF ARM
relating to changing of	)	30.3.102 and 30.3.104
royalties for exclusive licenses)	
and to fees for project licenses)	

TO: All Interested Persons:

1. On January 6, 1988 at 3:00 p.m. a public hearing will be held in Room 104 of the State Capitol Building in Helena, Montana to consider the amendment of A.R.M. 30.3.102 and 30.3.104.

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

30.3.102 USES OF THE LOGO (1) through (4) remain the same.

(5) For commercial and other uses, entities wishing to use the logo in conjunction with any officially sanctioned product, program, event or service--either for profit or not for profit--must pay an initial fee and royalties based on a percentage of revenues generated. The Except as provided in subsection (11), the initial fee will be \$250 and the royalty payment, not to exceed 7.5 percent of gross sales, must be calculated and paid quarterly. The office shall examine each application independently and may negotiate or waive required fees as circumstances dictate; for example, for a licensee representing more than one product, program, or event or service, a combined fee agreement may be available.

(6) through (10) will remain the same.

(11) In granting use of the logo, office does not convey general endorsement or sponsorship to licensees. Only in exceptional circumstances where particular benefit to the commemoration is demonstrated and additional compensation, which may include, in addition to fees and royalties assessed pursuant to subsection (5), a fee of up to \$25,000 and a royalty of up to 2.5 percent of gross sales, is rendered will exclusive licenses be issued for the rights to one-of-a-kind projects, programs, events, or services, or products.

AUTH: Sec. 89-2-106 MCA

IMP: Sec. 89-2-105 MCA

30.3.104 OFFICIAL COMMEMORATIVE PROJECTS (1) through (3) remain the same.

(4) Except for a minimal registration fee to recover costs for processing and fees assessed for use of the logo pursuant to 30.2.102, no standard charge will be assessed for official commemorative projects. For sanctioned events where an admission fee is collected, office may require a contribution of a percentage of the proceeds. For other programs, events or services, sponsors at the time of the application shall propose funding plans, including any dedication of proceeds for local or state centennial activities.

AUTH: Sec. 89-2-106 MCA

IMP: Sec. 89-2-105 MCA

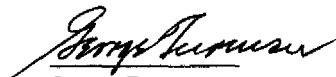
3. The amendments to 30.3.102 are proposed to clarify the meaning of subsection (5) of that rule as it relates to licenses for exclusive use. The office is of the opinion that the 7.5% royalty limitation contained in subsection (5) applies only to non-exclusive licenses. The interpretation has been questioned. The rule, as proposed to be amended, clearly provides that the office may issue exclusive licenses for products and may exceed the 7.5% limitation of subsection (5) when issuing an exclusive license. It also caps the royalty for exclusive licenses at 10%.

The amendment to 30.3.104 clarifies that the first sentence of 30.3.104(4) does not preclude the office from assessing a standard charge for use of the logo for official commemorative projects.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments at the hearing. Written data, views, or arguments may also be submitted to the Office of the Lieutenant Governor, Capitol Station, Helena, Montana, 59620 no later than January 7, 1988.

5. John F. North has been designated to preside over and conduct the hearing.

6. The authority of the office to make the proposed amendments is based on 2-89-106, MCA, and the rule implements 2-89-105, MCA.



George Turman
Lieutenant Governor

Certified to the Secretary of State November 30, 1987.

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

In the Matter of Proposed)	NOTICE OF PROPOSED ADOPTION
Adoption of a New Rule Allow-)	OF A NEW RULE ALLOWING ALL
ing the Purchase of a Tempo-)	MOTOR CARRIERS REGISTERED
rary Trip Permit in Lieu of a)	WITH THE MONTANA PUBLIC
Vehicle Identification Stamp.)	SERVICE COMMISSION TO PUR-
)	CHASE A TEMPORARY VEHICLE
)	TRIP PERMIT IN LIEU OF A
)	VEHICLE IDENTIFICATION STAMP
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On January 11, 1988 the Department of Public Service Regulation proposes to adopt a new rule to allow motor carriers registered with the Commission to purchase a temporary vehicle trip permit in lieu of a vehicle identification stamp.

2. The proposed rule provides as follows:

RULE 1 TRIP PERMITS (1) All motor carriers registered with the commission may purchase, upon payment of thirty dollars (\$30), and in lieu of the purchase of a vehicle identification stamp described in ARM 38.3.202, a temporary vehicle trip permit. This permit may be purchased directly from PSC enforcement officers or from GVM and Montana highway patrol officers and is valid for 72 hours from the time of purchase or until the carrier leaves the state, whichever comes first.

AUTH: Sec. 69-12-201; IMP: Secs. 69-12-201 and 69-12-421.

3. Rationale: The purpose of the proposed rule is to reduce conflict between enforcement officers and motor carriers and to encourage commerce into this state. The Commission believes that it is in the interests of motor carrier transportation in Montana to provide an alternative to the purchase of a vehicle identification stamp provided for in ARM 38.3.202(1)(e).

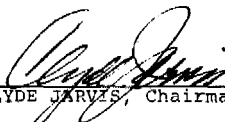
4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than January 11, 1988.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than January 11, 1988.


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

association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the number of motor carriers that travel on Montana highways.

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


CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 30, 1987.


Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF EXTENSION OF COMMENT
of Rules I through XII relating)	PERIOD on the PROPOSED ADOPTION
to Water's-Edge Election for)	of Rules I through XII relating
Multinational Corporations)	to Water's-Edge Election for
for Corporation Taxes.)	Multinational Corporations
)	for Corporation Taxes.

TO: All Interested Persons:

1. In MAR issue no. 20, pages 1945 - 1950, October 29, 1987, the department gave notice of a public hearing to be held on November 19, 1987, at 9:00 a.m., in Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I through XII relating to Water's-Edge Election for Multinational Corporations for the natural resource and corporation tax division of the department of revenue. This hearing was conducted as noticed.

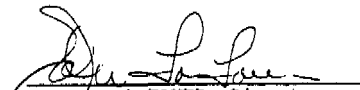
2. The sponsor of House Bill 703, Representative Bob Gilbert appeared at the hearing and requested the comment period be extended beyond December 1, 1987, to allow him sufficient time to review the rules.

3. Good cause appearing, the department will extend the period to receive written comments, data or arguments pertaining to these rules to December 15, 1987.

5. Interested parties may submit their data, views, or arguments in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than December 15, 1987.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 11/30/87.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.14.301,	)	THE PROPOSED AMENDMENT OF
46.14.302, 46.14.401 and	)	RULES 46.14.301, 46.14.302,
46.14.402 and repeal of	)	46.14.401 AND 46.14.402 AND
Rules 46.14.303, 46.14.304	)	REPEAL OF RULES 46.14.303,
and 46.14.305 pertaining to	)	46.14.304 AND 46.14.305
the Low Income Weatheriza-	)	PERTAINING TO THE LOW INCOME
tion Assistance Program	)	WEATHERIZATION ASSISTANCE
	)	PROGRAM

TO: All Interested Persons

1. On January 13, 1988, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.14.301, 46.14.302, 46.14.401 and 46.14.402 and repeal of Rules 46.14.303, 46.14.304 and 46.14.305 pertaining to the low income weatherization assistance program.

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

46.14.301 DEFINITION-OF-HOUSEHOLD LOW INCOME WEATHERIZA-
TION ASSISTANCE PROGRAM, DEFINITIONS

~~(1)--Financial-eligibility---standards--are--implemented throughout--the--state--and--are--applied--to--applicants--on--the basis--of--households--~~

~~(2)--A-household--consists--of--all--individuals--who--share--a single--primary--heating--source--and--who--live--in--a--single--shelter or--rental--unit--~~

~~(3)--An-unborn--child--may--not--be--counted--as--a--member--of the--household--~~

(1) "Excess energy use" means the annual heating cost minus the LIEAP annual benefit amount for a dwelling.

(a) The period used to determine excess energy use is the period preceding April 1 of each year.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 3, Ch. 390, L. 1985, Eff. 10/1/85

IMP: Sec. 90-4-201 and 90-4-202 MCA

46.14.302 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM,

ELIGIBILITY REQUIREMENTS-FOR-CERTAIN-TYPES-OF-INDIVIDUALS AND-HOUSEHOLDS (1) Except-as-provided-below, households which-certain-a-member-receiving-supplemental-security-income, aid-to-families-with-dependent-children, or-general-assistance

are automatically financially eligible for low income weatherization assistance--"Members receiving SSI, AFDC, or general assistance" includes any financially responsible relative or individual whose income and resources were considered in determining eligibility for these programs. Those persons eligible for the low income energy assistance program (LIEAP) are eligible for the low income weatherization program.

(2)--Households which consist of members receiving SSI, AFDC, or general assistance and other individuals whose income and resources were not considered in determining eligibility for SSI, AFDC, or general assistance are not automatically eligible for low income weatherization assistance but must meet the financial requirements set forth in this subchapter.

(3)--Licensed group living housing is eligible for weatherization service if 66-2/3% of the individuals residing in the housing are eligible.

(4)--Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent for federal income tax purposes by a taxpayer who is not a member of an eligible household are eligible for low income weatherization assistance after all other eligible homes have been weatherized.

(a)--An institution of higher education means a college, university, or vocational or technical school at the post-high school level.

(5)--Prior to weatherization multi-family housing, a specific eligibility test will be applied. Not less than 66-2/3% of the household units must be eligible household units.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 3, Ch. 390, L. 1985, Eff. 10/1/85

IMP: Sec. 90-4-201 and 90-4-202 MCA

46.14.401 PRIORITIZATION FOR SERVICE (1)--The department has established a priority formula in (2) below, for low income weatherization assistance.

(2)--The applicable benefit award matrices amount from the low income energy assistance program found in ARM 46.14.401 is multiplied by:

(a)--either 25 for eligible applicants 60 years or older who own their place of residence or 25 for eligible applicants who are disabled as defined by 20-CFR-416.901 who own their place of residence--The department hereby adopts and incorporates by reference the definition of a disabled person found in 20-CFR-416.901--A copy of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 42107, Bill Sanders, Helena, Montana 59604.

(b)--either 7 for eligible applicants 60 years or older who rent their place of residence or for applicants who are

~~disabled as defined by 20 CFR 416.901 who rent their place of residence;~~

~~(c) -- 3.5 for all other eligible applicants who own their place of residence;~~

~~(d) -- 1 for all other eligible applicants who rent their place of residence;~~

~~(1) Weatherization services will be provided to households according to the following priority:~~

~~(a) Households in each of the governor's substate planning districts with the highest excess energy use shall be given the highest priority.~~

~~(i) The weatherization service year will begin April 1 of each year.~~

~~(ii) Eligible households not currently on the prioritization list will be added only at the beginning of the next weatherization service year.~~

~~(b) The excess energy use of households containing a member who is either 60 years of age or older or handicapped as defined by 20 CFR 416 will be multiplied by 1.25 for purposes of prioritization.~~

~~(c) Dwellings which have been weatherized after September 30, 1979, with federal Department of Energy funds are not eligible for weatherization.~~

~~(32) If there exists a weatherization related imminent threat to the health or safety of an eligible household, their home may be designated a higher priority. To be so designated, it is the obligation of the household to provide proof of the imminent threat to the health or safety of the household to the local contractor who must request emergency designation from the department.~~

~~(43) Eligible homes Households will be prioritized quarterly anew each April 1.~~

~~Subsections (5) through (7) remain the same but will be renumbered as (4) through (6).~~

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 3, Ch. 390, L. 1985, Eff. 10/1/85

IMP: Sec. 90-4-201 and 90-4-202 MCA

46.14.402 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE Subsection (1) remains the same.

(2) Dwellings chosen to be weatherized shall receive those measures whose cost would be recovered in saved energy over a seven year period.

Original subsection (2) remains the same in text but will be recategorized as (3).

(a) A local contractor completes a ~~job inspection book~~ the department approved energy audit and the ~~inspection~~ audit reveals the cost-benefit ratio would be higher by reordering the standards as prioritized in subsection (3) below. It must be noted ~~on~~ in the ~~inspection sheet~~ client file that the

reordering is the most appropriate cost-effective measure in this case and signed off by the ~~local contractor~~ weatherization coordinator.

(b) Material to complete the prioritized standard is not commercially available or fails to meet the materials standards as prescribed by DOE.

(34) STATE STANDARDS FOR WEATHERIZATION
BY STANDARD DWELLING TYPE

<u>PRIORITY</u>	<u>SOURCE OF HEAT LOSS</u>	<u>WEATHERIZATION MEASURE REQUIRED</u>
<u>All Homes Other Than Mobile</u>		
1	General Heat <u>Energy</u> Waste	Stop Infiltration/Adjust Heating Source/Insulate Water Tank/Provide Energy Education/Turn Down H ₂ O Setting/Replace Electric H ₂ O Heaters With Natural Gas H ₂ O Heaters When Possible/Dust Insulation
2	* Uninsulated Ceilings	Insulate Ceilings to -R30 ⁺
3	Uninsulated Floor	Insulate Floor to -R11
4	Windows	Storm-Windows
4	Uninsulated Walls	Insulate Walls
5	Perimeter of Basement Uninsulated	Insulate Perimeter
6	** Partially Insulated Ceiling	Insulate Ceilings to -R30
7	Uninsulated-Walls	Insulate-Walls
7	Windows	Install Storm Windows/Thermal Curtain

Mobile homes - all sizes, all heat types

1	General Heat Waste	Stop Infiltration/Adjust Heating Source/Insulate Water Tank/Provide Energy Education/Turn Down H ₂ O Setting/Replace Electric H ₂ O Heaters With Natural Gas H ₂ O Heaters When Possible
2	Single-Glass	Storm-Windows/Thermal Curtains
3-or-4	Dead-Air-locks	Construct-Aid-Lock
4-or-3	Uninsulated-Perimeter	Skirt-Frazier
2	Uninsulated Floor	Insulate Floor

23-12/10/87

MAR Notice No. 46-2-523

<u>3</u>	<u>Jalousie Windows</u>	<u>Replace or Install Storm Windows</u>
<u>4</u>	<u>Single Glass</u>	<u>Install Storm Windows/ Window Quilts</u>
<u>5</u>	<u>No Skirting</u>	<u>Install Skirting</u>
<u>6</u>	<u>Pre-1975 Construction</u>	<u>Roof Cap</u>

~~† Insulation may be increased to an R-30 if required when coordinating with other weatherization services.~~

* Uninsulated is defined as R-11 or less.

** Partially insulated is defined as R-11 or more.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 3, Ch. 390, L. of 1985, Eff. 10/1/85

IMP: Sec. 90-4-201 and 90-4-202 MCA

3. Rule 46.14.303 as proposed to be repealed is on page 46-6024 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 3, Ch. 390, L. 1985, Eff. 10/1/85

IMP: Sec. 90-4-201 and 90-4-202

4. Rule 46.14.304 as proposed to be repealed is on pages 46-6024, 46-6025 and 46-6026 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 3, Ch. 390, L. 1985, Eff. 10/1/85

IMP: Sec. 90-4-201 and 90-4-202

5. Rule 46.14.305 as proposed to be repealed is on page 46-6026 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 3, Ch. 390, L. 1985, Eff. 10/1/85

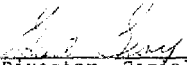
IMP: Sec. 90-4-201 and 90-4-202

6. The proposed changes are intended to eliminate duplicative rule language in the Low Income Energy Assistance Program (LIEAP) and the Low Income Weatherization Assistance Program; clarify that eligibility requirements are the same for both programs; amend the priority procedures to place those households paying the most out-of-pocket fuel costs at the top of the list of houses to be weatherized. This will be accomplished by measuring the benefits paid by the LIEAP against the annual heating costs for each eligible household; and provide for a computer energy audit of each home scheduled for weatherization. This will technically advance the delivery of weatherization services.

7. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 13, 1988.

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

9. These rule changes will be applied retroactively to October 1, 1987, with the exception of APM 46.14.401, which will be effective April 1, 1988.



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 30, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF THE ADOPTION
ment of ARM 2.44.303, 2.44.401,	)	OF AMENDMENTS TO RULES,
402, 404, 405, 407; 2.44.505,	)	NEW RULES AND REPEAL OF
506, 507, 509, 510; repeal	)	RULES PERTAINING TO
of 2.44.301, 302; 2.44.501,	)	TEACHERS' RETIREMENT
508; and adoption of ARM	)	SYSTEM
2.44.301A, 304, 305; 2.44.513)	
through 2.44.517)	

TO: All Interested Persons

1. On September 24, 1987, the Teachers' Retirement System published notice of a proposed adoption, amendment and repeal of rules at page 1600 of the 1987 Montana Administrative Register, issue number 18. A public hearing was held October 19, 1987.

2. The Teachers' Retirement System Board has adopted, amended and repealed the rules as noticed with the following change:

RULE V. Because of a question of statutory authority, the Board will not adopt Rule V.

3. At the public hearing, Tom Bilodeau, representing MEA, commented on the rule changes proposed and made no objections. A suggestion was made that the Board by rule require employers to give notice to teachers of the provisions of new or changed rules or statutes. The Board rejected this suggestion as administratively burdensome and not within the purview of the Board. These rule and statute changes will be addressed in the system handbook.

4. The adoption of the rules, amendments and repeal are reasonably necessary to clarify, establish and make consistent policies and procedures of the System and to meet the requirements of new legislation.

5. The authority for the rules is 19-4-201, MCA and the rules implement statutes as indicated in the notice.

By: 
DAVID L. SENN, EXECUTIVE SECRETARY
TEACHERS' RETIREMENT DIVISION

Certified to the Secretary of State November 30, 1987

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of a rule pertaining to fees) 36.409 FEE SCHEDULE AND THE
and the adoption of new rules) ADOPTION OF NEW RULE I. (8.
pertaining to therapeutic phar-) 36.801 THERAPEUTIC PHARMA-
maceutical agents) CEUTICAL AGENTS, II. (8.36.
) 802) APPLICANTS FOR LICEN-
) SURE, III. (8.36.803)
) APPROVED COURSE AND EXAMIN-
) ATION, AND IV. (8.36.804)
) APPROVED DRUGS

TO: All Interested Persons:

1. On October 15, 1987, the Board of Optometrists published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1718, 1987 Montana Administrative Register, issue number 19.

2. The hearing was held on Wednesday, November 4, 1987, at 9:00 a.m., in the downstairs conference room of the Department of Commerce building, 1424 9th Avenue, Helena, Montana.

3. The Board has amended and adopted the rules as proposed with the following changes:

"I. (8.36.801) THERAPEUTIC PHARMACEUTICAL AGENTS (1)
will remain the same.

(a) A certificate of competency for use of therapeutic pharmaceutical agents will be issued by the board of optometrists to those doctors of optometry who have successfully taken a required examination, or successfully passed an examination of the international association of boards of examiners in optometry. The fee will be determined by the board.

(b) and (c) will remain the same."

Auth: 37-10-202, MCA Imp: 37-10-304, MCA

"IV. (8.36.804) APPROVED DRUGS

(a) through (c) will remain the same.

(d) Anti-inflammatory Agents, except corticosteroids

(e) will remain the same.

(2) through (a)(1) will remain the same.

(11) Propoxyphene Propoxyphene

(111) Hydrocodone Hydrocodone

(1v) Dihydrocodone Dihydrocodone

(b) will remain the same."

Auth: 37-10-202, MCA AUTH Extension, Sec. 7, Chapter 588, L. 1987, Eff. 10/1/87 Imp: 37-10-304, MCA

4. The Board received the following comments at the public hearing.

COMMENT: The words "except corticosteroids" should be added to IV(4). The Board should also correct the spelling of drug names under IV(2)(a)(ii), (iii) and (iv).

RESPONSE: These changes and corrections have been made as shown above.

COMMENT: One comment was received from the staff of the Administrative Code Committee. They suggested that an authority extension should be added to new rule IV. (8.36.801).

RESPONSE: This has been done as shown above.

5. No other comments or testimony were received.

BOARD OF OPTOMETRISTS
KEN ZUROFF, O.D., PRESIDENT

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

Certified to the Secretary of State, November 30, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of a rule pertaining to fees) 58.411 FEE SCHEDULE

TO: All Interested Persons:

1. On October 15, 1987, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 1720, 1987 Montana Administrative Register, issue number 19.

2. The Board amended the rule as proposed.

3. The following comment was received from the staff of the Administrative Code Committee.

COMMENT: An extension of authority should have been added when the notice was proposed.

RESPONSE: AUTH Extension, Sec. 2, Ch. 306, L. 1987, Eff. 10/1/87 will be added to the history.

4. No other comments or testimony were received.

BOARD OF REALTY REGULATION
JOHN DUDIS, CHAIRMAN

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

Certified to the Secretary of State November 30, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BUILDING CODES BUREAU

In the matter of the amendments)	NOTICE OF AMENDMENT OF 8.
of rules pertaining to incor-)	70.101, 8.70.105, 8.70.202,
poration by reference of codes;)	8.70.303, 8.70.304, 8.70.
extent of local programs;)	401, 8.70.404, 8.70.407 AND
plumbing fixtures; permits;)	8.70.501 PERTAINING TO
standards; fees; and recrea-)	BUILDING CODES
tional vehicles))

TO: All Interested Persons:

1. On October 15, 1987, the Building Codes Bureau published a notice of public hearing on the proposed amendment of the above-stated rules at page 1725, 1987 Montana Administrative Register, issue number 19.

2. The hearing was conducted on November 9, 1987 in the downstairs conference room of the Department of Commerce building, 1424 9th Avenue, Helena, Montana.

3. The Bureau amended the rules as proposed.

4. The following comment from the staff of the Administrative Code Committee was taken under consideration.

COMMENT: The second statutory authority for 8.70.304 should be changed from 50-60-504, MCA to 50-60-501, MCA; the statutory authority for 8.70.407 should be changed from 50-60-604, MCA to 50-60-603, MCA; and the implementing section in 8.70.407 should be changed from 50-60-607, MCA to 50-60-604, MCA.

RESPONSE: The Bureau concurred and these changes have been made.

5. No other comments or testimony were received.

BUILDING CODES BUREAU
JAMES F. BROWN, BUREAU CHIEF

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

Certified to the Secretary of State, November 30, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

In the matter of the) ORDER PROMULGATING AN
Emergency Amendment of Rule) EMERGENCY AMENDMENT TO RULE
8.86.301 (6)(g) As It Relates) 8.86.301 (6)(g)
To The Class I Price Formula)
) PRICING RULES

Petitioner, Meadow Gold Dairies, Inc., Billings, Kalispell, Great Falls and Missoula having filed a petition for an emergency amendment with the Board and the Board having received representation of certain relevant facts in support thereof on November 25, 1987 finds as follows:

1. That Montana IGA and Associated Foods retail stores are substantially reducing or altogether discontinuing Petitioners shelf space in favor of competitive brands. This practice will have a significant effect upon Petitioner's milk sales. If this practice continues and the emergency relief sought is not granted, Petitioners will have no adequate relief and the harm to it and its producers and jobbers will be immediate and irreparable.

2. The conduct described above in paragraph 1 will place the Petitioner and its jobbers and producers at a serious competitive disadvantage under the present law and will not be afforded the opportunity to compete which will seriously jeopardize their businesses. Petitioners and their jobbers and producers represent over half the milk supply in the state of Montana.

3. Such activity if continued will jeopardize and threaten the supply of milk to institutions, consumers and possibly the existence of the law itself, thus creating possible harm to the public health, safety and welfare.

4. Section 2-4-303 (1), MCA, provides that if an agency finds that imminent peril to the public health, safety or welfare, requires adoption of a rule upon fewer than thirty (30) days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule and that the rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under 2-4-302 is not precluded.

5. The harm described in the above paragraphs mandates that the Board issue an immediate emergency Order amending its ARM Rule 8.86.301 (6)(g) to delete all references to service and restrictions concerning service without prior notice.

6. Based upon the above findings that there is imminent peril to the public health, safety and welfare the Board adopts the following emergency amendments to ARM Rule 8.86.301:

78-86,301 PRICING RULES

(1) . . .

(6) . . .

(g) The minimum wholesale price will be marked up ten percent (10%) to arrive at minimum retail prices.

(i) Special wholesale prices for retail grocery stores will be based on the procedures provided in subsections (A), (B) and (C) below. All milk purchased under one of the procedures indicated below must be paid within fifteen (15) days after invoicing unless there is a different time frame specified in the applicable rule section. Retailers are prohibited from purchasing milk at more than one level price level of-service from any one distributor and distributors are prohibited from offering more than one level-of-service price level to any one retailer in any single billing period. This does not prohibit a retailer from changing price levels of service in subsequent billing periods.

(A) A special wholesale price for retail grocery stores will be calculated by multiplying regular retail prices by a factor of eighty-nine percent (89%) for full-service delivery by a distributor. Any milk purchased herein must be paid for within fifteen (15) days after invoicing.

(B) Wholesale drop service for retail stores: shall be
~~41) --Distributor-delivery-shall-be-limited-to-the-service~~
~~door-or-refrigerated-storage-box~~

~~42) --Deliveries-shall-be-limited-to-a-maximum-of-four~~
~~43) --times-per-week, with a one-hundred-fifty-dollar (\$150.00)~~
~~minimum-rate~~

~~44) --The-retail-store-shall-assume-all-responsibility~~
~~for-servicing-the-dairy-case-and-rotating-the-stock-of-fluid~~
~~milk-products-in-stores-service-by-the-distributor-is-not~~
~~permitted~~

~~45) --The-retail-store-shall-assume-all-responsibility~~
~~for-loss-of-occasional-expiration-of-product-code-dates~~

~~46) --The minimum retail price will-be marked down by~~
~~sixteen percent (16%) to-arrive-at-a-minimum-wholesale-drop~~
~~service-price.~~

(C) Wholesale dock pickup or-delivery price:

(I) Delivery shall be F.O.B. the distributor's dock, or
~~F.O.B. the-wholesale-grocer's-dock.~~

(II) The minimum retail price will be marked down by twenty-two and three-tenths percent (22.3%) to arrive at the minimum wholesale dock pickup or-delivery price.

(III) Any milk purchased herein must be paid for within ten (10) days after invoicing.

(IV) Resale will be based upon the wholesale full service price or wholesale drop service price, whichever is applicable.

(V) A minimum pickup or delivery will be five hundred (500) gallons.

(h) . . ."

7. It is hereby ordered that the foregoing emergency rule be, and hereby is adopted effective November 30, 1987 for a period of 120 days ending March 31, 1988.

8. It is further ordered that the administrator of the Milk Control Bureau send a copy of this order to all persons licensed by the Bureau, to the state wire service, and other news media.

9. The authority of the Board to make the emergency rule is 81-23-302 and the rule implements 81-23-302, MCA.

DATED NOVEMBER 30, 1987.

MONTANA BOARD OF MILK CONTROL
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross
WILLIAM E. ROSS, Bureau Chief

Certified to the Secretary of State November 30, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA BOARD OF INVESTMENTS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
and adoption of rules pertain-) 97.802 DEFINITIONS, 8.97.
ing to definitions, applica-) 803 APPLICATION PROCEDURE
tions and tax credits) TO BECOME A "CERTIFIED"
) MONTANA CAPITAL COMPANY,
) 8.97.804 APPLICATION PROCE-
) DURE TO BECOME A "QUALI-
) FIED" MONTANA CAPITAL
) COMPANY, 8.97.805 COMPLETED
) APPLICATION DATE, 8.97.807
) ALLOCATION OF TAX CREDITS,
) AND THE ADOPTION OF NEW
) RULE I. (8.97.809)
) RESERVATION OF TAX CREDITS

TO: All Interested Persons:

1. On October 29, 1987, the Montana Board of Investments published a notice of proposed amendment and adoption of the above-stated rules at page 1874, 1987 Montana Administrative Register, issue number 20.

2. The board has amended and adopted the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF INVESTMENTS
JOSEPH REBER, CHAIRMAN

By:

Keith P. Colbo

KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 30, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF THE AMENDMENT
amendments of Rule 12.6.901	)	OF ARM 12.6.901 TO CLOSE
pertaining to water safety	)	CRYSTAL LAKE IN FERGUS
regulations.	)	COUNTY TO MOTOR-PROPELLED
	)	WATER CRAFT AND TO ESTABLISH
	)	A NO-WAKE SPEED LIMIT ON
	)	PORTIONS OF LAKE KOOKANUSA
	)	ON CRIPPLE HORSE BAY

TO: All Interested Persons:

1. On July 16, 1987 the Montana Fish and Game Commission published notice of the proposed amendment of Rule 12.6.901 to close 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, at page 955, of the Montana Administrative Register, issue number 13.

2. No public hearing was held nor was one requested. The department has received no written or oral comments concerning those rules.

3. Based on the foregoing, the Commission hereby amends the rule as proposed.



Robert Jensen, Chairman
Fish and Game Commission

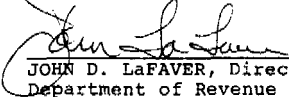
Certified to the Secretary of State November 30, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF THE ADOPTION of
of Rule I (42.16.1104) relating) Rule I (42.16.1104) relating
to Earned Income for the Income) Earned Income for the Income
Tax Division.) Tax Division.

TO: All Interested Persons:

1. On October 29, 1987, the Department published notice of the proposed adoption of Rule I (42.16.1104) relating to Earned Income for the Income Tax Division at pages 1943 and 1944 of the 1987 Montana Administrative Register, issue no. 20.
2. The Department has adopted rule I (42.16.1104) as proposed.
3. No comments or testimony were received.



JOHN D. LaFAVER, Director
Department of Revenue

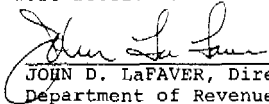
Certified to Secretary of State November 30, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE ADOPTION of
of 42.17.105 relating to)	amendment of 42.17.105
Computation of Withholding)	relating to Computation of
Income Tax.)	Withholding Income Tax.

TO: All Interested Persons:

1. On October 29, 1987, the Department published notice of the proposed adoption of 42.17.105 at pages 1953 through 1955 of the 1987 Montana Administrative Register, issue no. 20.
2. The Department has amended 42.17.105 as proposed.
3. No comments or testimony were received.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 11/30/87.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.13.301 and	)	RULES 46.13.301 AND
46.13.502 and adoption of	)	46.13.502 AND ADOPTION OF
Rule (I) 46.13.405 pertaining	)	RULE (I) 46.13.405 PER-
to establishment of a Per-	)	TAINING TO ESTABLISHMENT OF
centage of Income Plan (PIP)	)	A PERCENTAGE OF INCOME PLAN
in Ravalli County	)	(PIP) IN RAVALLI COUNTY

TO: All Interested Persons

1. On October 15, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.13.301 and 46.13.502 and adoption of Rule (I) 46.13.405 pertaining to establishment of a Percentage of Income Plan (PIP) in Ravalli County at page 1757 of the 1987 Montana Administrative Register, issue number 19.

2. The Department has amended Rules 46.13.301 and 46.13.502 as proposed.

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

46.13.405 PERCENTAGE OF INCOME PLAN (PIP) Subsections (1) through (5) remain as proposed.

~~(a)---A-PIP-household's-accumulated--pre-PIP--arrearages will--be--amortized--and-forgiven-with-one-half-of-the--household's-accumulated-arrearages-forgiven-each-program-year.~~

~~(ii)---PIP-households-failing--to-maintain--their-obligations-under-the-PIP-will-not-obtain-arrearage--forgiveness-for-the-period-in-which-the-default-occurred-unless-the-default-is-cured.~~

(a) PIP households maintaining their obligations under PIP will earn arrearage credits.

(i) Annual earned arrearage credit will equal one-half of the household's accumulated pre-PIP arrearage.

(ii) Once the household's accumulated pre-PIP arrearage has been reduced to zero, no further arrearage credits may be earned.

Subsection (5)(b) remains as proposed.

(i) These households may receive emergency supplemental benefits and an earned arrearage forgiveness credit if they have paid their co-payments.

Subsections (5)(c) through (7)(a)(i) remain as proposed.

(ii) Households which fail to cure two co-payment defaults will be removed from PIP for the remainder of the program year. The provisions of 46.13.104 covering fair hearings are applicable to all applicants of the PIP.

Subsection (7)(a)(iii) remains as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: Rule I (5)(d) and (7)(a) differs from the language recommended by the Low Income Energy Program Advisory Council.

RESPONSE: The proposed language is consistent with the project narrative dated October 6, 1987, which was the basis for the Council's recommendations.

COMMENT: The phrase "except for those applying for a fair hearing" should be added to Rule I (7)(a)(ii).

RESPONSE: The final rules will add the sentence, "The provisions of 46.13.104 concerning fair hearings are applicable to all applicants of the PIP".

COMMENT: The language in Rule I (5)(b)(i) is unnecessary.

RESPONSE: The word "emergency" has been changed to "supplemental" to more clearly express the Department's intent.

COMMENT: The definition of "arrearage" in APM 46.13.201(4) should be amended to read, "...means the outstanding balance of the PIP household's energy bill as of the application date each program year".

RESPONSE: The Department disagrees. Since the client's application date is often scheduled several weeks after he initially inquires about the program, clients may be adversely affected by adoption of the proposed change.

COMMENT: A more appropriate term than "arrearage forgiveness" should be used.

RESPONSE: The Department agrees. The final rule has been changed to substitute "earned arrearage credit" for "forgiveness".

5. These rule changes will be applied retroactively to October 1, 1987.

Director, Social and Rehabilitation Services

Certified to the Secretary of State _____, 1987.

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VOLUME NO. 42

OPINION NO. 39

GAMBLING - Calcutta pool, distinguishing characteristics of;
MONTANA CODE ANNOTATED - Title 23, chapter 5, part 11;
sections 23-5-1101, 23-5-1102;
MONTANA CONSTITUTION - Article III, § 9.

HELD: A legal Calcutta pool exists if all of the following circumstances occur:

1. The bets vary in amount and were "sold" at an auction;
2. The auctioneer/house has no interest in the outcome of the event;
3. The amount a bettor can win varies with the size of the pool rather than with odds set by the auctioneer/house;
4. The Calcutta pool is "fully subscribed," i.e., all competitors in the event--either individually or as part of the "field" (see James and Gamble, supra)--are wagered on, so that the auctioneer or the house does not have an interest in the outcome of the event;
5. The rules of the particular Calcutta pool do not allow more than one wager per competitor (or "field") per Calcutta pool.

16 November 1987

Ted O. Lympus
Flathead County Attorney
Flathead County Courthouse
Kalispell MT 59901

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

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula MT 59802

Gentlemen:

You have requested my opinion concerning the following question:

Are sports books encompassed within the definition of Calcutta pools in section 23-5-1101, MCA?

As you know, it is my policy not to issue opinions on the legality of specific activities. It is my belief that such rulings intrude on the lawful functions of local prosecutors and courts. However, because these statutes (§§ 23-5-1101 to 1106, MCA) are not self-explanatory, and because of the need for uniformity in the application of statutes dealing with gambling, I have determined that a formal opinion is warranted in this situation. In addressing your question, however, I will concentrate on explaining the specific characteristics of Calcutta pools, as legalized by section 23-5-1102, MCA, leaving it for you to determine whether a specific activity should be prosecuted.

The Legislature has defined the term "Calcutta pool" as follows:

As used in this part, "Calcutta pool" means a form of auction pool in which persons bid or wager money, with winnings awarded based on the outcome of an event, except that persons may not bid or wager money on any elementary school or high school sports event.

§ 23-5-1101, MCA. I believe a strict construction of this statute is warranted for several reasons. First, the Montana Constitution, article III, section 9, as well as section 23-5-102, MCA, prohibit all forms of gambling except those specifically authorized by

statute. Second, the common usage of the phrase "a form of" denotes a particular example within a larger class. This leads to the conclusion that all Calcutta pools must be auction pools. Finally, the intent of the Legislature, as expressed in the legislative history of sections 23-5-1101 to 1106, MCA, suggests that these statutes are to be strictly construed. (See Hearings on House Bill 648, Montana House of Representatives Business and Labor Committee February 13, 1987, p. 9; Montana Senate Business and Industry Committee, March 5, 1987, pp. 4-5.) Section 1-2-102, MCA, directs those construing statutes to pursue the intent of the Legislature, if possible. If the Legislature had wanted to legalize forms of sports bookmaking, it would have expressed this intent, either in the language of the bill passed or in legislative history. It did not do so.

Examining the term "auction pool," the following extensive definition is contained in an 1885 Maryland case.

A certain number of horses is entered to run at a certain race, to be held at a certain time and place. Any person desiring to invest money in a pool or race, offers to the auctioneer a certain amount of money for the choice or selection of a horse, which he supposes will be the winner of the race. A number of bids may be offered for the first choice. The person offering the highest amount obtains the first choice or selection of the horse which he supposes will be the winner, which horse he then and there names; the amount then and there offered for the first choice, is then and there deposited in the hands of the parties conducting the pools. It often occurs, that after several different choices are selected by the persons bidding, there remains a number of horses undisposed of--these are called "the field." These are taken together by the person offering and depositing the highest amount for the same. The amount so deposited for each choice, and the field, (if there be a field,) are added together, and the total constitutes what is commonly called "the pool." Each person so depositing his money on his choice or on the

field, receives a card or receipt for the same, showing the horse or (if on the field) the horses selected, the amount so deposited, and the total amount in the pool. The money in the pool (less the commission of five per cent. to the person or persons conducting the pool) is paid to the person having selected the winning horse in the race, upon presentation of the card or receipt aforesaid, to the person conducting the pool. [Emphasis added.]

James and Gamble v. State, 63 Md. 242, 248-49 (1885).

Calcutta pools often occur in conjunction with sports events with multiple entrants (golf tournaments, rodeos, track meets, basketball tournaments, etc.). See also Kilpatrick v. State, 58 N.M. 88, 265 P.2d 978, 980 (1953). John Scarne, a recognized authority on gambling, describes a particular golf tournament Calcutta pool as follows:

After the participants [in the golf tournament] are chosen, the Calcutta pool opens with a player auction in which gamblers bid for individual golfers. The bids for the privilege of "owning" a player usually range from \$2,000 to \$25,000. ... [T]he [pool] is usually divided as follows: 50% to the holder of the winning player, 20% to the holder of the second place, 15% to the holder of third place, and 10% and 5% to the holder of fourth and fifth place.

J. Scarne, Scarne's New Complete Guide to Gambling at 138 (2d ed. 1974).

Because Calcutta or auction pools are a long-standing and limited form of gambling, without substantial pertinent legal explication, I have found it useful to consult various authorities who contrast these pools with other types of gambling. For example, bookmaking is a form of gambling which differs from Calcutta pools. The sports bookmaker has been described as follows:

The sports bookmaker is a broker, bringing together money on both sides of a sports contest. He hopes to bring these monies

together in such a manner that the losers' money will be more than sufficient to cover payments to winners. In order to achieve an equality between the teams, one which the bookmaker hopes will attract like sums of money on each contestant, a handicapping process takes place.

Organized Crime Training Institute, California State Department of Justice, California Investigation Training Manual 8.

In the early days of betting on horse races, most bets were made either in auction pools or with bookmakers licensed by the track and working within the track enclosure. An important distinction between pools and books is set forth in the following discussion of the development of pari-mutuel betting:

At most of the thoroughbred tracks, before the pari-mutuel betting system came into use, the books were licensed by the track and paid the track a fixed fee for the privilege of accepting bets within the track enclosure. Each bookie was his own handicapper and pricemaker and usually quoted his own payoff odds. These often varied from one bookie to another; ... The pari-mutuel (Paris mutuel) system was invented in Paris, France, in 1865 by Pierre Oller. ... Oller suggested that tickets be sold on each horse and that the payoff price of each winning ticket be determined by the amount of money wagered on the winner in relation to the amount wagered on all the horses in the race. This meant that the bettors would be wagering against each other rather than against the bookmaker, and they could get back only the amount wagered minus a percentage which the bookmaker retained as his commission. This is exactly what happens today.

J. Scarne, op. cit. (pp. 48-49; see also pp. 46-47).

In the usual sports book, the amount of money wagered varies according to the bettor's and agent's agreement, and the amount of money available to be won varies with the odds given when the bet is placed. Thus, the

bookmaker is actually betting against the people who place bets with him, because he gives odds at the time bets are placed. This accounts for the fact that a bookmaker will minimize his risks by altering odds in the course of accepting bets on an event in an attempt to balance the amount bet on each competitor (cf. Ignatin, "Sports Betting," 474 The Annals of the American Academy of Political and Social Science 168 (July 1984)).

In the sports book, the bookmaker is the counterpart of the banker in a banking game. This element is crucial, because it gives the bookmaker a vital interest in the outcome of the event. (For a discussion of the interest element in bookmaking see State v. Andreano, 285 A.2d 229, 231 (1971).) By contrast, in a Calcutta pool, the interest of the auctioneer/Calcutta pool operator is only a percentage of the total pool; he has no interest in the outcome of the event. Concluding the comparisons, pari-mutuel betting combines elements of both auction pools and books. Wagers are made for fixed amounts, with winnings varying according to the odds at the close of betting. However, all wagers form a pool, with the odds calculated "internally" and varying continuously as the betting on various competitors changes. A bettor has no vested interest in any particular odds, and potential winnings (as well as the operator's commission) are calculated using a fixed formula.

Thus, the primary distinguishing characteristics of Calcutta pools, legalized under Montana law, are that the bets are made through a competitive bidding process, and the house or auctioneer has no interest in the outcome of the event wagered upon; rather, the only interest of the house/auctioneer is in a fixed percentage of the pool.

Having said this, I believe it is advisable to point out that the term "auction" is a broad one and that the statutes (§§ 23-5-1101 to 1106, MCA) contain no limitations on that term.

It is my conclusion that in legalizing Calcutta pools, the Legislature clearly intended to expand the number of legal types of sports betting beyond the sports pools currently legalized by sections 23-5-501 to 511, MCA. It did not, however, legalize what are commonly known as

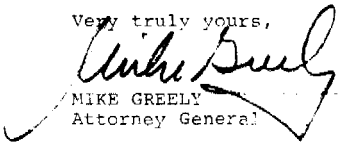
sports books where the bookmaker sets the odds and has an interest in the outcome of the event.

THEREFORE, IT IS MY OPINION:

A legal Calcutta pool exists if all of the following circumstances occur:

1. The bets vary in amount and were "sold" at an auction;
2. The auctioneer/house has no interest in the outcome of the event;
3. The amount a bettor can win varies with the size of the pool rather than with odds set by the auctioneer/house;
4. The Calcutta pool is "fully subscribed," i.e., all competitors in the event--either individually or as part of the "field" (see James and Gamble, supra)--are wagered on, so that the auctioneer or the house does not have an interest in the outcome of the event;
5. The rules of the particular Calcutta pool do not allow more than one wager per competitor (or "field") per Calcutta pool.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 40

COUNTIES - County commissioners' authority to permit private use pipeline on county road right-of-way;
COUNTY GOVERNMENT - County commissioners' authority to permit private use pipeline on county road right-of-way;
COUNTY COMMISSIONERS - Authority to permit private use pipeline on county road right-of-way;
OIL AND GAS - County commissioners' authority to permit private use pipeline on county road right-of-way;
MONTANA CODE ANNOTATED - Sections 7-14-2102, 7-1-2103, 7-14-2107(3), 69-13-103.

HELD: The board of county commissioners is statutorily charged with a significant amount of discretion in determining whether to permit the use of a county road right-of-way for the laying of permanent or temporary pipelines. However, this discretion is potentially limited by state regulation and further defined by the case law and statutes discussed in this opinion.

17 November 1987

Arnie A. Hove
McCone County Attorney
McCone County Courthouse
Circle MT 59215

Dear Mr. Hove:

You have requested my opinion on the following:

Whether the board of commissioners has authority to permit the use of the county road rights-of-way for the laying of permanent or temporary pipelines or cable to private companies in view of section 7-14-2107(3), MCA, and Holinger v. Bozeman, 158 Mont. 507, 493 P.2d 1062 (1972).

The authority of the commissioners over uses of the rights-of-way for county roads is contained in section 7-14-2107(3), MCA, which provides: "By taking or

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accepting interests in real property for county roads, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it." This section does not delineate the parameters of the commissioners' legislative authority. There are two other statutes which provide some general direction. The first is section 7-14-2102, MCA, stating:

Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts. [Emphasis supplied.]

The second is section 7-1-2103, MCA, stating:

A county has power to:

....

(4) make such orders for the disposition or use of its property as the interests of its inhabitants require[.]

These statutes suggest that the county commissioners may exercise a significant amount of discretion. This discretion, however, is potentially affected by other state regulatory statutes, particularly those pertaining to pipeline carriers in Title 69, chapter 13, MCA. The potential applicability of these statutes is significant in that it serves as a reminder to the county commissioners that, depending upon facts not available in this request, other state departments' regulatory authority may potentially affect their freedom of discretion. See specifically § 69-13-103, MCA.

The principal Montana case suggesting limits to the commissioners' discretionary authority and examining section 7-14-2107(3), MCA, is Bolinger v. Bozeman, supra. In Bolinger, the Supreme Court conceded that rural roads may be used for constructing sewers and laying pipes for the transmission of "gas, water, and the like for public use."

Whether it be travel, the transportation of persons and property, or the transmission of intelligence, and whether accomplished by old methods or by new ones, they are all included

within the public "highway easement," and impose no additional servitude on the land, provided they are not inconsistent with the reasonably safe and practical use of the highway in other and usual and necessary modes, and provided they do not unreasonably impair the special easements of abutting owners in the street for purposes of access, light, and air. [Emphasis added.]

Id. at 515, 493 P.2d at 1066. The commissioners are charged with substantial discretion insofar as the public's interests are protected. Support for this assumption is contained in other statements accepted by the Bolinger court:

"We think that to use the street in a reasonable manner, and to a reasonable extent, for this purpose [placing telephone poles and lines along the streets] is just and proper, and is within the uses to which the street may lawfully be put, when such use is sanctioned by the public through its duly-authorized municipal agents."

Id. at 516, 493 P.2d at 1068.

Such use of the streets and highways is conducive to the public welfare and serves one of the purposes for which they are dedicated.

Id. at 518, 493 P.2d at 1068.

From Bolinger and the above-cited statutes there are four factors which I believe delineate the parameters of the authority of the county commissioners: First, the statutes clearly give the county commissioners broad discretion, stating "[e]ach board ... may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts." § 7-14-2102, MCA. Second, this discretion is potentially limited by state-imposed regulations concerning pipeline carriers, but the extent of the limitations depends upon the applicability of those statutes to specific factual situations. Third, the board must find that its action is "necessary for the best interest of the county roads and the road districts" and does not "unreasonably impair the special

easements of abutting owners in the street for purposes of access, light and air." Finally, the county commissioners must determine that the use is "conducive to the public welfare and serves one of the purposes for which [highways and streets] are dedicated."

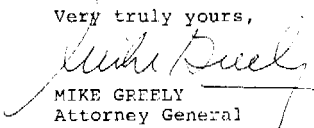
These are the parameters within which the county commissioners are bound. Whether the private pipeline in the instant case is within these parameters is a matter for the commissioners to decide.

You also ask my opinion on the county's liability if it were to grant permission for the laying of pipelines. Questions of liability depend upon facts in a given situation. It is not appropriate to discuss liability in an Attorney General's Opinion.

THEREFORE, IT IS MY OPINION:

The board of county commissioners is statutorily charged with a significant amount of discretion in determining whether to permit the use of a county road right-of-way for the laying of permanent or temporary pipelines. However, this discretion is potentially limited by state regulation and further defined by the case law and statutes discussed in this opinion.

Very truly yours,



MIKE GREELEY
Attorney General

VOLUME NO. 42

OPINION NO. 41

ANNEXATION - What constitutes "wholly surrounded land";
MUNICIPAL GOVERNMENT - What constitutes "wholly surrounded land";
PROPERTY, REAL - What constitutes "wholly surrounded land";

MONTANA CODE ANNOTATED - Sections 7-2-4201 to 7-2-4210, 7-2-4204, 7-2-4301 to 7-2-4331, 7-2-4304, 7-2-4401 to 7-2-4421, 7-2-4408, 7-2-4501 to 7-2-4511, 7-2-4502 to 7-2-4505, 7-2-4601 to 7-2-4621, 7-2-4609, 7-2-4701 to 7-2-4761, 7-2-4718.

HELD: A parcel of land is "wholly surrounded" under section 7-2-4501, MCA, when access may be gained only by crossing through the municipality.

18 November 1987

Leo W. Tracy
Whitefish City Attorney
6336 Highway 93 South
Whitefish MT 59937

Dear Mr. Tracy:

You have requested my opinion concerning the following questions:

1. May a municipality annex under sections 7-2-4501 to 4511, MCA, an area which is bordered on three sides by the municipality and on the remaining side by a large navigable lake?
2. May a municipality annex under sections 7-2-4501 to 4511, MCA, an area which is directly bordered on three sides by the municipality, on one side by a railroad right-of-way for trackage, and on one side by a railroad right-of-way for station grounds?

I conclude that the municipality may annex the area described in the first question but not the area in the

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second under sections 7-2-4501 to 4511, MCA.

Montana provides various methods for municipalities to annex additional territory. §§ 7-2-4201 to 4210, MCA (additions to municipalities); §§ 7-2-4301 to 4331, MCA (annexation of contiguous lands); §§ 7-2-4401 to 4421, MCA (annexation of contiguous government lands); §§ 7-2-4501 to 4511, MCA (annexation of wholly surrounded lands); §§ 7-2-4601 to 4621, MCA (annexation by voter petition); §§ 7-2-4701 to 4761, MCA (annexation under the Planned Community Development Act); see State ex rel. Hilands Golf Club v. City of Billings, 198 Mont. 475, 477-78, 647 P.2d 345 (1982); Montana Legislative Council, Montana's Annexation Laws 12-18 (Nov. 1980). More than one of these annexation procedures may apply to a given parcel of land, and the municipality's governing body is authorized to select that procedure "appropriate to the circumstances of the particular annexation." See §§ 7-2-4204(2), 7-2-4304(2), 7-2-4408(2), 7-2-4505(2), 7-2-4609, 7-2-4718(2), MCA. Presently, the City of Whitefish desires to utilize the "wholly surrounded land" provision with respect to two parcels of land. Whether annexation may be effected under this provision is significant because, unlike the other applicable procedures, consent by a majority of resident freeholders is not required. § 7-2-4502, MCA; see Comment, Annexation in Montana--A Time for Change, 35 Mont. L. Rev. 71, 73, 77-78 (1974).

The first parcel includes land which is bordered by Whitefish Lake on one side and the city on the remaining sides. The second parcel is irregularly shaped but basically five-sided. The city abuts this parcel on three sides, while a railroad right-of-way abuts it on the remaining two sides. Although part of the right-of-way is used only for trackage, the railroad's large station grounds are directly contiguous to one side of the parcel. The station grounds are not surrounded by the city.

Section 7-2-4501, MCA, states that "[a] city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation." Certain types of property, including that used for transportation purposes such as the railroad right-of-way, are excluded from this method of annexation, but the property sought

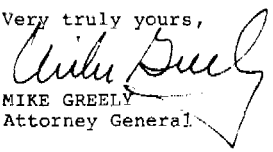
to be annexed here is not among them. § 7-2-4503, MCA. While not statutorily defined, the term "wholly surrounded" was construed in Calvert v. City of Great Falls, 154 Mont. 213, 217, 462 P.2d 182, 184 (1969), to include land which, while not completely contiguous with the municipality, was nonetheless surrounded by it: "The term 'wholly surrounded' means that ... where all lands on the side of the tract are within the city and where it is impossible to reach the tract without crossing such territory, the tract is 'wholly surrounded'." The term "wholly surrounded" in section 7-2-4501, MCA, must therefore be practically interpreted to achieve the legislative objective of permitting annexation when a particular parcel has become, in essence, landlocked by a municipality. Under this analysis, the first tract is "wholly surrounded" because, as to all sides bordered by land, it is surrounded by the municipality. The applicability of section 7-2-4501, MCA, is not vitiated by the lake's presence on the remaining side since all land access to the parcel must be through the municipality.

In contrast, the second parcel is not "wholly surrounded." Access to the parcel is possible from the railroad's station grounds, and those grounds are not surrounded by the municipality. Because of this access, it is unnecessary for me to address the issue of whether the railroad right-of-way, insofar as it is used exclusively for trackage, is "a street or other roadway ... or a strip of unplatted land too narrow or too small to be platted," which may be ignored for purposes of contiguity under section 7-2-4504, MCA.

THEREFORE, IT IS MY OPINION:

A parcel of land is "wholly surrounded" under section 7-2-4501, MCA, when access may be gained only by crossing through the municipality.

Very truly yours,


MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

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

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