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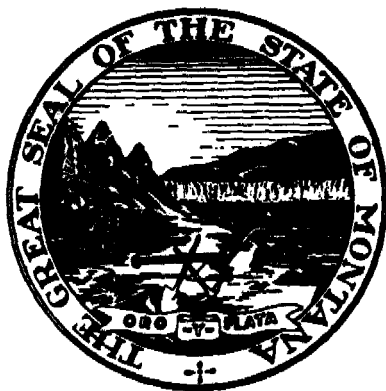
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OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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have a partial exemption from the overtime pay provisions of the FLSA. Section 7 of the FLSA describes covered employees with partial exemptions and 29 CFR 553 subpart C further explains the partial exemption for fire fighters and law enforcement personnel. Covered employees who qualify for a partial exemption under the FLSA are covered by the additional requirements set by this policy after the partial exemption has been met.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Nonexempt or covered employee" means an employee subject to the overtime provisions of the federal Fair Labor Standards Act of 1938, as amended and its regulations. It does not mean certain employees exempt from the overtime pay provisions of the FLSA in a position designated as executive, administrative, or professional as these terms are defined in 29 CFR 541. (Employees in positions designated as outside sales are also exempt from the overtime pay provisions of the FLSA, but may be covered by the provisions of 39-3-401, et seq., MCA, the Montana minimum wage and overtime compensation law and ARM 24.16.101, et seq., Montana wage and hour regulations.)

(2) "Nonexempt compensatory time" means time accrued at a rate of one and one-half hours for each hour of employment for which overtime compensation is required pursuant to the FLSA, its regulations and this policy. Accrued time may be taken as approved paid time off at a later date or cashed out in accordance with this policy and federal requirements.

(3) "Overtime" means time worked by a nonexempt employee in excess of 40 hours in a workweek. (An exception is described in section 7 of the FLSA and 29 CFR 553 subpart C for covered employees with partial exemptions, such as fire fighters and law enforcement personnel.)

(4) "Workweek" means a regular, recurring period of 168 hours in the form of seven consecutive 24-hour periods. (An exception is described in section 7 of the FLSA and 29 CFR 553 subpart C for covered employees with partial exemptions, such as fire fighters and law enforcement personnel.) The workweek need not be the same as the calendar week. The workweek may begin on any day of the week and at any hour of the day. Once established a workweek may not be changed unless the change is intended to be permanent.

RULE IV ADMINISTRATION OF OVERTIME COMPENSATION AND NONEXEMPT COMPENSATORY TIME (1) In addition to the provisions of the FLSA and its regulations, state agencies shall do the following when administering overtime compensation and nonexempt compensatory time:

(a) Count all hours in a pay status as hours worked for the purpose of calculating a workweek. Absent time in a pay status, including holidays, paid leaves, and compensatory time taken off, is counted as hours worked.

(b) Require employees to report overtime hours worked on a time and attendance form as prescribed by the agency, for the additional hours to be compensated as overtime hours or accrued as nonexempt compensatory time.

(c) Record overtime and nonexempt compensatory time in no smaller than 1/10 hour increments. (For example: .1 hour equals 6 minutes and .2 hour equals 12 minutes.) The fractional increment may be rounded off, provided that over a period of time, this practice does not result in the failure to compensate the employee for the entire time actually worked.

(d) Require employees to take nonexempt compensatory time off in no less than one-half hour increments.

(2) Agencies shall keep records of wages, hours worked, and other items listed in the record keeping regulations of the FLSA found at 29 CFR part 516 and 553.

(3) As provided in ARM 2.21.4906, the state moving and relocation expense policy, "under no circumstances may the employee earn compensatory time or overtime during the time approved by the agency to allow the employee to accomplish the move." This includes nonexempt compensatory time accrued in lieu of overtime compensation.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE V OVERTIME COMPENSATION (1) As provided in section 7 of the FLSA, covered employees shall receive overtime compensation at a rate of one and one-half times the employee's regular hourly rate for all hours in a pay status over 40 in a workweek, unless the agency and the employee agree to the accrual and use of nonexempt compensatory time in accordance with 29 CFR 553. (Exceptions are described in section 7 and 29 CFR 553 subpart C.)

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE VI NONEXEMPT COMPENSATORY TIME (1) State agencies may, at their discretion, allow some or all of their employees covered by the FLSA to accrue and use nonexempt compensatory time in lieu of cash overtime compensation according to the provisions in 29 CFR Part 553. State agencies are not required to make the accrual and use of nonexempt compensatory time available for use by covered employees.

(2) Where a state agency chooses to allow some or all of its covered employees to accrue nonexempt compensatory time, the agency must follow all of the provisions of 29 CFR part 553, application of the fair labor standards act to employees of state and local governments. 29 CFR 553 specifically requires:

(a) That covered employees must agree in advance, to receive compensatory time off in lieu of receiving cash overtime compensation; and

(b) That unused nonexempt compensatory time must be cashed out at specified rates upon termination.

(3) In addition to federal requirements found in 29 CFR Part 553, state agencies shall:

(a) Require approval from the appropriate authority, in advance whenever possible, for a covered employee to work hours which may result in the payment of overtime compensation or the accrual of nonexempt compensatory time; and

(b) Cash out unused nonexempt compensatory time when a covered employee transfers from one agency to another agency.

(4) In accordance with 29 CFR part 553, state agencies may:

(a) Establish a lower maximum accrual than that provided in the federal regulations;

(b) At any time, pay cash for all or any portion of a covered employee's accrued compensatory time balance;

(c) Adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or accrual of nonexempt compensatory time; and

(d) Require a covered employee to take accrued nonexempt compensatory time off during any workweek.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE VII CLOSING (1) Provisions of this policy not required by statute shall be followed, unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. Background Information: On February 19, 1985, the U.S. Supreme Court in *Garcia v. San Antonio Metropolitan Transit Authority* (Garcia), 105 S.Ct. 1005 (1985), held that the provisions of the federal Fair Labor Standards Act (FLSA) applied to state and local governments. Prior to this time the U.S. Supreme Court in *National League of Cities v. Usery* (NLOC) 426 U.S. 833 (1976), held that the FLSA could not constitutionally be applied to "traditional" government functions.

On November 13, 1985, the FLSA amendments of 1985 were enacted into law. These amendments changed certain provisions of the FLSA by including special provisions in the law which apply only to employees of state and local governments. Prior to November, 1985, it was not permissible under federal or state law to provide compensatory time off in lieu of cash overtime compensation. The 1985 amendments and proposed rules, 29 CFR Part 553, allow state and local governments to give compensatory time off under certain conditions in lieu of immediate overtime pay in cash.

The state of Montana had enacted 39-3-401 et seq., MCA, the Montana Minimum Wage and Overtime Compensation Act and adopted ARM 24.16.101 et seq. to implement the act. Montana

state agencies also were required to operate according to the Montana statute and rules. On April 17, 1986, the attorney general issued an opinion (Vol. No. 41, Opinion No. 58) which held that Montana state employees who are covered by the FLSA are not subject to the provisions of the Montana statute and its regulations. As a result of this decision Montana state agencies must now follow the federal FLSA and its regulations and may permit compensatory time off in lieu of overtime compensation for nonexempt employees.

4. These rules are proposed in response to concerns expressed by the Personnel Policy Network, a group made up of representatives from executive branch agencies, that the state rules need to be revised to comply with the federal FLSA and its amendments.

Currently, rules for the administration of compensatory time for exempt employees and overtime for nonexempt employees are found in one policy, ARM 2.21.1501 et seq. Since nonexempt employees may now be allowed to accrue and use compensatory time, but on a different basis than exempt employees, the Policy Network recommended the repeal of the current rules. In place of the current policy, the Network recommended two sets of new rules: one addressing compensatory time for exempt employees and one addressing overtime and compensatory time in lieu of overtime for nonexempt employees. The Network believes that separate rules are necessary so that employees and supervisors clearly understand which compensatory time requirements apply to exempt employees and which apply to nonexempt employees.

The above proposed rules apply to nonexempt employees and would:

- (a) direct state agencies that they are required to administer overtime and compensatory time off in lieu of overtime according to the federal FLSA and its regulations;
- (b) add minimum requirements not found in the federal law that state agencies must also follow; and
- (c) direct state agencies on discretionary issues which are not addressed through federal requirements.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption of rules to:


Laurie Ekanger, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than May 5, 1987.

6. Barb Charlton, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell

Building, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed adoption is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.



Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State March 16, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF PUBLIC HEARING ON
of ARM 2.21.1501, 2.21.1502,) THE PROPOSED REPEAL OF RULES
and 2.21.1511 through) 2.21.1501, 2.21.1502 and
2.21.1520, 2.21.1531, and) 2.21.1511 through 2.21.1520,
2.21.1532, and the adoption of) 2.21.1531 and 2.21.1532, AND
new rules relating to the) THE ADOPTION OF NEW RULES
administration of compensatory) RELATING TO THE ADMINISTRA-
time for employees exempt from) TION OF COMPENSATORY TIME
the federal Fair Labor) FOR EMPLOYEES EXEMPT FROM
Standards Act (FLSA)) THE FEDERAL FAIR LABOR
) STANDARDS ACT (FLSA)

TO: All Interested Persons.

1. On April 28, 1987, at 12:15 p.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the repeal of ARM 2.21.1501, 2.21.1502, and 2.21.1511 through 2.21.1520, 2.21.1531 and 2.21.1532 and adoption of new rules relating to the administration of compensatory time for employees exempt from the federal Fair Labor Standards Act (FLSA).

2. The rules proposed to be repealed are on pages 2-799 through 2-802 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the exempt compensatory time policy.
(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to allow state employees who are exempt from the federal Fair Labor Standards Act of 1938 (FLSA, title 29 USCA, Chap. 8, Sec. 201-219, as amended) to accrue and use exempt compensatory time in compliance with this policy and additional agency policy and procedures. State and federal law do not require the state to make the accrual or use of compensatory time available to exempt employees. Exempt compensatory time is not intended to provide any compensation in addition to the salaries established in statute. Rather, it is a means of providing greater flexibility in scheduling time for exempt, salaried employees.

(2) Nothing in this policy guarantees that an exempt employee will be allowed to work hours which result in the accrual or use of exempt compensatory time. Each request to work such hours shall be approved or disapproved by the

agency, in compliance with this policy and additional agency policy and procedures.

(3) The objective of this policy is to establish minimum standards for the administration of exempt compensatory time for state employees not subject to the overtime provisions of the FLSA.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Exempt compensatory time" means time accrued on an hour-for-hour basis for time in a pay status in excess of 40 hours in a workweek. Accrued time may be taken as approved paid time off at a later date.

(2) "Exempt employee" means an employee in a position designated as executive, administrative, or professional, which is not subject to the overtime pay provisions of the federal FLSA and its regulations. Exemptions are listed in section 13 of the FLSA and further defined in 29 CFR 541.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE IV ADMINISTRATION OF EXEMPT COMPENSATORY TIME

(1) All hours in a pay status shall be counted as hours worked for purposes of calculating exempt compensatory time earned. Absent time in a pay status, including holidays, paid leaves, and exempt compensatory time taken off is counted as hours worked.

(2) Hours worked in excess of 40 in a workweek shall be reported on a time and attendance form, as prescribed by the agency, to be accrued as exempt compensatory time.

(3) Exempt compensatory time shall be earned, recorded, and used in no less than one-half hour increments.

(4) Records will be kept according to the record keeping requirements of the FLSA found at 29 CFR 516 and 553.

(5) As provided in ARM 2.21.4906, the moving and relocation expense policy, "under no circumstances may the employee earn compensatory time or overtime during the time approved by the agency to allow the employee to accomplish the move."

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE V EXEMPT EMPLOYEES AND EXEMPT COMPENSATORY TIME

(1) An exempt employee shall obtain approval from the appropriate authority, in advance whenever possible, to work hours which result in the accrual of exempt compensatory time.

(2) The appropriate authority decides whether extra hours worked by an exempt employee should be credited as exempt compensatory time under these rules.

(3) An agency shall decide whether hours in excess of 40 in a workweek which an exempt employee spends traveling

or attending lectures, meetings, education, or training should be credited as exempt compensatory time under these rules.

(4) Accrued exempt compensatory time may be taken off by the employee at a mutually agreeable later date during the employee's regular working hours, if the use of the compensatory time does not unduly disrupt the operations of the agency. Where the interest of the state requires the employee's attendance, the state's interest overrides the employee's interest to take exempt compensatory time off. An agency may require an exempt employee to take accrued exempt compensatory time off during any workweek.

(5) An agency may, at any time, prohibit the accumulation of exempt compensatory time until the employee's balance is reduced below 120 hours or below a lower maximum established by the agency.

(6) A maximum of 120 hours of exempt compensatory time may be carried over from one calendar year to the next. A determination of excess exempt compensatory time will be made as of the end of the first pay period which extends into the next calendar year. The employee must take off all excess compensatory time during the first 90 days of the next calendar year or forfeit the excess hours except as provided in (7).

(7) An agency may approve an exception to the forfeiture requirement provided in paragraph (6) of this rule. Such an exception may be approved to deal with special and unique circumstances which represent periodic or temporary situations that can not be adequately addressed by other management actions. When an exception to the forfeiture requirement is approved in advance by the agency head or designee, the employee shall not forfeit excess exempt compensatory time hours during the next calendar year. At the end of that year, a new determination of excess exempt compensatory time hours shall be made.

(8) Exempt compensatory time may be transferred with the employee to another agency, provided the new agency agrees. An agency is not obligated to accept any exempt compensatory time when an employee transfers from another agency. The agency, at its discretion, may agree to accept some or all accrued exempt compensatory time, up to a maximum of 120 hours.

(9) Agencies are under no obligation to extend an employee's termination date to allow an employee to take off accrued exempt compensatory time upon termination.

(Auth. 2-18-102 MCA; Imp. 2-18-102 MCA)

RULE VI CLOSING (1) Provisions of this policy not required by statute shall be followed, unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

4. Background Information: On February 19, 1985, the U.S. Supreme Court in *Garcia v. San Antonio Metropolitan Transit Authority* (Garcia), 105 S.Ct. 1005 (1985), held that the provisions of the federal Fair Labor Standards Act (FLSA) applied to state and local governments. Prior to this time the U.S. Supreme Court in *National League of Cities v. Usery* (NLOC) 426 U.S. 833 (1976), held that the FLSA could not constitutionally be applied to "traditional" government functions.

On November 13, 1985, the FLSA amendments of 1985 were enacted into law. These amendments changed certain provisions of the FLSA by including special provisions in the law which apply only to employees of state and local governments. Prior to November, 1985 it was not permissible under federal or state law to provide compensatory time off in lieu of cash overtime compensation. The 1985 amendments and proposed rules, 29 CFR Part 553, allow state and local governments to give compensatory time off under certain conditions in lieu of immediate overtime pay in cash.

The state of Montana had enacted 39-3-401 et seq., MCA, the Montana Minimum Wage and Overtime Compensation Act and adopted ARM 24.16.101 et seq. to implement the act. Montana state agencies also were required to operate according to the Montana statute and rules. On April 17, 1986, the attorney general issued an opinion (Vol. No. 41, Opinion No. 58) which held that Montana state employees who are covered by the FLSA are not subject to the provisions of the Montana statute and its regulations. As a result of this decision Montana state agencies must now follow the federal FLSA and its regulations and may permit compensatory time off under certain conditions in lieu of overtime compensation for nonexempt employees.

5. These rules are proposed to be repealed and replaced with new rules in response to concerns expressed by the Personnel Policy Network, a group made up of representatives from executive branch agencies, that state rules need to be revised to comply with the federal FLSA and its amendments.

Currently, rules for the administration of compensatory time for exempt employees and overtime for nonexempt employees are found in one policy, ARM 2.21.1501 et seq. Since nonexempt employees may now be allowed to accrue and use compensatory time, but on a different basis than exempt employees, the Policy Network recommended the repeal of the current rules. In place of the current policy, the Network recommended two sets of new rules: one addressing compensatory time for exempt employees and one addressing overtime and compensatory time in lieu of overtime for nonexempt employees. The Network believes that separate rules are necessary so that both employees and supervisors clearly understand which compensatory time requirements apply to exempt employees and which apply to nonexempt employees.

The above proposed rules apply only to exempt employees and include:

(a) a statement of the purpose and objective of compensatory time for exempt, salaried employees;

(b) the addition of language to clarify the end of the year forfeiture requirement and exceptions to this requirement for exempt compensatory time;

(c) the reduction of advisory language concerning the approval of exempt compensatory time;

(d) an emphasis on management's authority to approve or disapprove the accrual and use of exempt compensatory time; and

(e) the continuation of the practice of counting all hours in a pay status including compensatory time as hours worked.

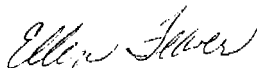
6. Interested parties may submit their data, views, or arguments concerning the proposed repeal of the current rules and adoption of the new rules to:

Laurie Ekanger, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than May 5, 1987.

7. Barb Charlton, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

8. The authority of the agency to make the proposed adoption is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.



Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State March 16, 1987.

BEFORE THE MONTANA STATE LIBRARY COMMISSION

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment and repeal of rules in	)	PROPOSED AMENDMENT AND REPEAL
Chapter 101, sub-chapter 1	)	OF ARM SECTION 101, ORGANIZA-
concerning the organizational	)	TIONAL AND PROCEDURAL RULES
rule; and Chapter 102, sub-	)	AND SECTION 102, SUBSTANTIVE
chapters 1 and 11 concerning	)	RULES
general policy and public)	
library development)	

TO: All Interested Persons:

1. On May 2, 1987 at 1:30 PM, a public hearing will be held in the Mountain Con room of the Copper King Inn, 4655 Harrison Avenue South, Butte, MT to consider the amendment and repeal of rules in Section 101 sub-chapter 1, Organizational Rule; and Section 102, sub-chapter 1 and 11, General Policy and Public Library Development.

2. The rules proposed to be amended are as follows (matter to be stricken is interlined, new material is underlined):

10.101.203 GUIDELINES FOR PUBLIC PARTICIPATION (1)
Meetings and agendas. The Commission holds regular meetings on the Friday preceding the second Monday in April, July, September and December. Agendas for each meeting are prepared in advance and are available from the office of the state librarian. The commission shall meet during the last week of February, at the Montana library association conference, June, August and October and in the first week of December, and at such other times as may be appropriate. Special meetings may be called by the chair or at the request of two members. An agenda for each regular meeting shall be prepared by the state librarian in consultation with the chair and will be distributed in advance, with supporting documents to the members.

(2) Information: the state library publishes a newsletter containing news about libraries in Montana and activities of the commission and state library. This publication, the Montana Newsletter, will be mailed without charge to any interested person requesting the same. Agendas are available to the public from the office of the state librarian. Supporting documents may be requested from that office. Each commission agenda shall provide an open time for the public to address the commission. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.101 STATEMENT OF PHILOSOPHY AND OBJECTIVES (1)
(a) The Montana state library commission believes that an

enlightened citizenry constitutes the foundation of democracy and that every resident in Montana should have the opportunity to foster his own development in pursuit of education throughout his life;

(b) that all libraries are intrinsic to education and that the library is a vital and integral part of the community's total educational resources;

(c) that the primary function of the library is to serve as an essential cultural, informational and educational resource for all people regardless of age, race, creed, sex or occupation.

(2) (a) All Montanans should have legal and reasonably convenient access to a public library, and through it, to the library resources in their area, the state and the nation.

(b) ~~Only through the establishment of public library systems known as federations of libraries can local communities approach this goal in Montana.~~

(cb) It is the objective of the Montana state library commission to foster the development of strong library federations in accord with statutory public policy.

(3) (a) The state library commission affirms its belief in the basic policies which govern the services of all libraries stated in the Library Bill of Rights, Freedom to Read Statement, Intellectual Freedom Statement, Resolution on Challenged Materials and Statement on Labeling of the American library association.

(b) The library commission supports the principle that freedom to read is the right of every citizen.

(4) To serve the people of Montana, the commission maintains a state library which provides materials and services:

(a) to supplement the resources of local libraries through services to federations ~~headquarters libraries, and through them, to other public libraries, school libraries, academic and special libraries;~~

(b) to provide lending reference and readers' advisory services directly to:

(i) state government officers and employees and federal or other governmental agencies to support the research needs of the agencies;

(ii) residents of state institutions;

~~(iii) those residents of the state who have no city or county public library but whose local governments contract for library services from a federation headquarters library.~~

(iviii) persons who because of a physical or visual handicap are unable to use conventional printed materials. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

3. Sections 10.101.203 through 10.102.101 have been amended to conform with MCA 22-1-101 through MCA 22-1-103, and to reflect revisions of the state library commission policy.

10.102.101 STANDARDS FOR PUBLIC LIBRARIES. (1) The state library commission, on October 20, 1969, adopted Montana public library standards, and directed that they be published and distributed. These standards cover the structure and government of libraries, their service, the selection, organization and control of materials, personnel and physical facilities. The standards are set forth in the following forty-eight rules. The state library commission adopted revised Montana public library standards December, 1982. These standards replaced the Montana public library standards published in 1969. The new standards were published in 1983; these standards are based on the American library association standards, the public library mission statement and its imperatives for service. These emphasize the planning process and meeting the needs of individual communities, rather than proposing a single set of standards for all libraries.

(2) Copies of the standards in pamphlet form with appendices of ancillary materials have been distributed to all public libraries and library board members in the state. and They are available locally in every community in Montana which has a public library. Copies are available, without charge, upon request to from the state library in Helena, MT. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1102 STRUCTURE AND GOVERNMENT OF LIBRARIES GOVERNANCE, FUNDING AND ADMINISTRATION (1) Montana law provides for the establishment and maintenance of public libraries. Government officials, library boards, librarians, friends of libraries and other interested citizens should be familiar with the legal provisions affecting library service. Governance, funding, and administration of the public library in Montana must reflect the following realities:

(a) Every person needs and has a right to access to the human record, appropriate to her or his own level of concern.

(b) The public library is uniquely responsible for providing and coordinating this access for its total community.

(c) Since a mobile population now moves freely in and out of political jurisdictions, the local public library can no longer consider its local constituency as its only responsibility.

(d) The local public library can no longer meet the needs of its local constituency solely with local resources or local funding.

(e) The needs of people in whatever support area cannot be met by the resources of any one type of library or libraries. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1103 LIBRARY BOARD (1) All public libraries as agencies of local government shall be ~~controlled~~ operated by authority(ties).

(2) Library board members ~~should~~ shall be chosen because of their interest in libraries and their concern for total library service to the community, to assure broad

representation from the community and to provide periodic infusion of new ideas.

(3) Board members must be aware of their duties and responsibilities as stipulated in Montana state law. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1104 LIBRARY BOARD MEETINGS (1) Meetings of the board of trustees should be held regularly.

(2) The librarian shall attend board meetings as secretary to the board and prepare the agenda for these meetings in consultation with the chairman.

(3) These meetings shall be open to the public and shall be publicly announced prior to the stipulated meeting date. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1105 LIBRARY BOARD BYLAWS (1) All library boards of trustees shall adopt bylaws for the conduct of their business. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1106 LIBRARY BOARD POLICIES (1) The trustees, with the advice of the librarian, shall adopt written policies and objectives for the operation of the library (~~e.g.,~~ i.e.: for book selection, personnel management, hours and extent of service, etc.) and ~~periodically~~ annually review these policies.

(2) The library's policies should include adoption of the Library Bill of Rights, ~~as amended~~ and the Freedom to Read statement.

(3) The board shall delegate active management of the library to the librarian, giving him/her full responsibility for carrying out these policies. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1107 LIBRARY BOARD PLANNING (1) The board, together with the librarian and the staff, is responsible for ~~long-range planning~~ a five-year plan for library development with stated goals and objectives, in accordance with the Montana plan for the development of library service, to insure that such planning is recognized as an essential function of local government and included with other plans for community development.

(2) This planning should include a careful evaluation of the library's services, complete documentation of its present needs and potential future activities based upon an assessment of community needs. The planning should be reviewed annually. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1108 LIBRARY ANNUAL REPORTS (1) An annual report of the library's activities should ~~shall~~ be prepared by the librarian and submitted to the board of trustees; the board in turn shall submit this report to the governing body(ies). (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1109 LIBRARY-BUDGET (1) An annual budget for the library is shall be prepared by the librarian, for discussion and adoption by the board. The board and the librarian will present the budget to the governing body(ies). The budget shall be administered in accordance with Montana state laws. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1110 LIBRARY-LEGISLATION (1) The library board and the librarian should be actively familiar with legislation on local, state and national levels that affects libraries. This implies a high level of political sophistication and involvement on the part of public library administrators and trustees. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1111 AFFILIATION WITH FEDERATIONS (1) Individual community libraries have a responsibility to seek affiliation with the central library in a federation. Montana's state-wide library federation system revolves around the concept of resource sharing. Libraries are advised to participate fully in federation activities. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1112 INTERLIBRARY RELATIONSHIPS MULTI-TYPE LIBRARY COOPERATION (1) Public libraries should must work together with other libraries in the community state to assure that all resources are utilized to the fullest, working toward an expansion, rather than a duplication of library service.

(2) All librarians in the community should meet together regularly to keep each other informed of current activities; to plan for coordination of services and development of collections, and to consider the feasibility of joint activities. To this end all libraries in the state should communicate regularly with other local librarians and through their affiliation with their statewide professional organizations to keep each other informed of current activities, to plan for coordination and services, development of collections, and to consider the feasibility of joint activities.

(3) Special attention should be paid to the library needs of students, public librarians should meet regularly with teachers and school administrators as well as school librarians to keep informed of their problems; and to keep them informed of the public library's resources and services. Public libraries in the state of Montana should constantly consider new patterns of funding. Alternatives to the property tax, alternatives to the single municipality, and alternatives to the single type library must be actively investigated. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1113 PUBLIC LIBRARY-SERVICES (1) The public library exists to serve all people regardless of their age, education, economic level or human condition in their need for information and understanding. Public libraries exist to serve

all Montanans. They should insofar as possible, strive toward being cultural, educational, informational, recreational and rehabilitative centers for their communities.

(2) All services in the following discussion are possible to some degree in any library unit, whether small or large, providing that the library's staff is dedicated to service. The services of the public library include:

(a) The collection of books, periodicals and other materials and the arrangement of them for convenient access and borrowing. Public libraries have a special obligation to collect local information and materials.

(b) Guidance in the general use of collection.

(c) Reference service for provision of information and pursuit of research.

(d) Interlibrary loan service for providing materials beyond the immediate community.

(e) Opportunity for lifelong learning.

(3) Participation in a well established federation insures that these services can be adequately provided by every public library in every size of community.

(4) The services performed by a public library are:

(a) the accumulation and logical organization of the materials of communication (books, magazines, films, sound recordings, pamphlets, etc.) for convenient use through classification, cataloging and shelf arrangement;

(b) the lending of these materials so that they may be used in a location and at a time convenient to each individual, including whatever tools and services are necessary to provide service to the handicapped and disadvantaged;

(c) guidance and interpretation in the finding and use of these materials;

(d) the provision of information and research services designed to locate facts as needed;

(e) assistance to civic, social and educational organizations in locating and using these materials in the pursuit of their own ends;

(f) stimulation of the use of the library through publicity, displays, reading lists, story hours, book talks, book and film discussion and other appropriate means either in the library or in community organizations. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1116 HOURS OF SERVICE (1) Each public library should be open for service at least 15 hours per week at fixed times and uniform hours, all should be open some evening hours. Hours shall reflect patterns of use. Libraries are obligated to consider flexible hours in the interest of the patron.

(a) Population	Hours open
under 2,500	15 hours weekly
2,500-4,999	15-30 hours weekly
5,000-9,999	30-45 hours weekly
10,000-24,999	45-60 hours weekly
25,000-49,999	60-69 hours weekly

~~over 50,000~~

~~69 or more hours weekly~~

~~(2) During open hours, service should be maintained for all library users -- children, young adults and adults.~~

~~(3) The library should review the hours of service each year in consideration of adequate service to the community.~~

~~(4) Bookmobiles should stop at least every two weeks in each community served.~~

~~(a) Frequency of visits should be increased as use increases.~~

~~(b) The length of time spent at each visit should be sufficient to serve all library needs of the community -- circulation of books, answering or recording reference needs, etc., at no time should the visit be less than 30 minutes. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)~~

10.102.1117 LENDING REGULATIONS (1) Lending The regulations of a public library should shall be developed solely to facilitate the use of its materials and should be regularly reviewed so that ~~it is remembered that~~ rules are never become ends in themselves.

~~(2) Within a federation all libraries should make use of uniform loan periods, reciprocal borrowers' privileges, regular delivery service and interlibrary loan procedures, consideration should be given to use of uniform circulation systems. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)~~

10.102.1118 REFERENCE SERVICE (1) Public libraries should shall provide for all persons factual information and professional guidance in the use of reference sources.

~~(a) Such assistance should utilize, through the proper channels, all library resources available, beyond the not only in the community, but also in the state, region and nation.~~

~~(b) Intensive reference and searching should be done to meet the scholarly, business and industrial interest of the community.~~

~~(c) Within justifiable limits, preparation of reports, compilation of statistical information, abstracting, etc., should be among the library's services.~~

~~(2) The public libraries should shall provide telephone information and reference service and should utilize the most effective, rapid means of communication to serve its community when practical and appropriate.~~

~~(3) The public library should maintain a central source of information about educational opportunities for children, adults and young adults and about organizations in the area.~~

~~(a) It should provide information about individuals or groups who offer programs and individuals who serve as resource persons. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)~~

10.102.1119 GUIDANCE PROGRAMMING (1) All public libraries should provide individual reading guidance and counsel to children, young adults and adults, as well as to the blind, the home-bound and the disadvantaged, such guidance can be given through book talks, lectures, story-telling, special subject programs, reading improvement programs, as well as individual counseling. Libraries are encouraged to plan creative programs in fulfilling their multiple roles.

(2) All public libraries should provide guidance and counsel to groups, both formal and informal, in planning, organizing and conducting significant activities for all people in the community, when possible, the library should provide resource persons, materials, facilities and equipment to further the success of such programs.

(3) The public library should take leadership in initiating and stimulating educational programs which are needed in the community, at times it should focus its resources and services on socially significant questions. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1120 PUBLIC INFORMATION. LOCAL HISTORY (1) The public library should have a specific program to inform the community in an interesting and understandable way about its services, through such means as radio, television, the press, service talks, displays etc. Public libraries can make a major contribution to their communities by collecting and preserving the cultural materials of their locales. Libraries should collect books, newspapers, pamphlets, broadsides, pictorial materials, personal manuscripts and business records. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1121 MATERIALS. SELECTION RESOURCES (1) The public library as an institution exists to provide materials which communicate experience and ideas from one person to another.

(2) Its function is to assemble, organize, preserve and make easily and freely available to all people printed and non-printed materials.

(3) Public library materials may include all forms of recorded knowledge: books, periodicals, pamphlets, newspapers, pictures, slides, films, sheet music, maps, cassettes, records, microfilms, videoforms, etc.

(4) Each public library board shall adopt written policies for the acquisition selection and selection acquisition of materials. The actual selection of the materials shall be the responsibility of the librarian and library staff.

(5) Libraries participating in a federation will develop these policies cooperatively.

(6) The actual selection of materials shall be the responsibility of the librarian and the library staff.

(7) These policies should shall be reviewed periodically and revised in accordance with changes in the library's activity and the level of service provided in the programs of

~~the federation headquarters and participating libraries to fit the changing needs of the community and/or federation. (Auth Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)~~

10.102.1122 SELECTION CRITERIA (1) In choosing library materials the following factors ~~should~~ shall be ~~observed~~ considered:

(a) the extent to which the library intends to own materials and to which it expects to borrow, both within and outside the federation;

(b) ~~the current and anticipated educational, informational, and recreational needs of the community. The educational, informational, and recreational needs of the community as determined by community study.~~

(c) ~~the value and significance of the subject, the authority and intent of the author and the effectiveness of presentation and format.~~

(2) Specialized appropriate resources and nationally recognized guides should be utilized in selection and evaluation of the collection in all public libraries. Access to these guides shall be available at the federation headquarters library.

~~(3) At least all of the following guides should be in the headquarters library in a federation, at least the last two guides should be found in even the smallest public library. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)~~

10.102.1126 COLLECTION ORGANIZATION (1) The library's collection ~~must~~ shall contain ~~the various opinions expressed on important, complicated or controversial questions, materials that reflect all points of view, including the unpopular or unorthodox positions.~~

(2) Materials ~~of the required quality, serving which serve~~ the purposes of the library and ~~relating to an existing need or interest which will fulfill a community need will not~~ be removed from the collection; nor will materials ~~lacking these qualities~~ be added solely because of pressure by groups of or individuals.

(a) ~~The selection policy should indicate the library's subscription to the "Freedom to Read Statement", adopted in 1953 by the ALA council. A policy for the evaluation of material for withdrawal from the collection should be established and implemented.~~

(i) ~~Materials that are outdated, worn out or inappropriate should be removed from the collection and replaced with new titles or new editions, as appropriate. Public libraries, in cooperation with state library agencies, should assume leadership in negotiating a policy for retention on the regional and state level.~~

(ii) The character and emphasis of the collection of the federation headquarters and participating libraries should be influenced by the collections of other libraries in the community and federation area.

(iii) Materials may be selected in any format: print, sound recordings, slides, transparencies, film, recordings, microfilms, etc., depending on availability and appropriateness for use. The format that will meet the community need for the longest period of time for the money spent should be the format purchased. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1129 EPHEMERAL PRINTED MATERIALS (1) Public libraries should maintain collections of ephemeral printed materials, pamphlets, etc., on subjects of interest to the community, special attention should be paid to the collection and useful organization of manuscripts, books, letters, clippings, pamphlets, reports and other documents relating to the history of the community and area. Every public library has the responsibility to develop materials collection sufficient to meet the majority of local needs. Federation headquarters libraries shall be responsible for developing a materials collection that meets the needs of the federation to the greatest extent possible. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1130 FILMS (1) All public libraries should maintain membership in the Montana Public Library Cooperative Film Service and supply information about films shall promote the use of the Montana Public Library Cooperative Film Service.

(2) The federation headquarters library should have at least 200 films in its own collection and should supply projectors for use within the federation. This collection should be sufficient to meet the general needs of libraries of the state.

(3) The collection in the Montana Public Library Cooperative Film Services should include at least 1,000 film titles. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1134 PERSONNEL (1) The quality of public library service in Montana is directly dependent upon how well each library maintains high standards for personnel. For the public library to achieve its mission, recruitment and development of personnel are of primary importance. In addition to traditional bibliographic skills, public librarians must be able to:

(a) Assess needs, set objectives, and evaluate and measure the effectiveness of public library programs.

(b) Select materials and provide guidance in the use of all library resources.

(c) Work within the political and social structures of the community.

(d) Communicate and work effectively with trustees and staff.

(e) Make use of current and emerging technologies for information and communication.

(2) The library's unique function of serving as the one unbiased, nonpartisan source of information for all the people calls for personnel of the highest competence and integrity. These personal and professional demands require librarians with broad general education, appropriate subject knowledge, and specialized skills, with capacity to interpret and achieve institutional objectives, and with commitment to client needs. The public library should also utilize personnel from other disciplines as needed to support the library service program.

(3) In order for public libraries and federations to provide an adequate and effective program, it is necessary that they have a competent, professionally qualified, well selected and properly compensated staff.

(4) Library governing bodies are responsible for the employment of personnel who will ensure technical competence and inspirational leadership.

(5) A competent staff and their high job satisfaction and morale are keys to the assurance of effective library service.

(6) Since public libraries are above all public service institutions, it is imperative that they be staffed by people who are dedicated to service, motivated by a desire to help people and eager to give service in a friendly manner. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1135 POSITION CLASSIFICATION (1) Library positions as defined in a written job description should be clearly defined and differentiated in terms of requirements, duties and responsibilities.

(2) Each library should have a position classification plan, grouping similar positions for equitable personnel administration. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1136 WRITTEN PERSONNEL POLICIES (1) In addition to the position classification plan, each library should have written personnel policies which provide for All public libraries should have a written personnel policy which requires affirmative action and equal opportunity in hiring, training and promotion of staff. That policy should include:

(a) appointments, promotions and dismissal of personnel in libraries on the basis of merit, without regard to race, sex, marital status, national origin, political opinions or religious beliefs;

(b) a specified probationary period for new employees and periodic performance evaluation for all staff members;

(c) benefits, such as vacation and sick leave allowances, retirement, health and life insurance;

(d) leaves of absence, with pay and travel allowance, for attendance at professional meetings, institutes and workshops. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1137 SALARIES (1) Salaries for all staff members should reflect their responsibility within the library, or federation, and be competitive within the job market.

(a) within the community for those positions normally filled locally, and

(b) nationally, for those positions for which the library competes in a national market.

(2) Salary schedules should provide for regular increases, where practicable, there should be provision for special salary increases for superior performance. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1140 IN-SERVICE TRAINING AND PROFESSIONAL GUIDANCE CONTINUING EDUCATION (1) The larger library should provide a program of routine and specialized in-service training for its staff members to participate in training programs offered by local, regional, state and national organizations and agencies. Staff at all levels have the right to continuing education opportunities and a responsibility to participate in them. Library administrators should be committed to continuous personnel development, providing both incentives and opportunities.

(2) The smaller library should provide opportunities for its staff to participate in training offered by such agencies.

(3) All libraries should encourage staff to belong to and participate in activities of professional library organizations.

(4) The headquarters library in a federation should provide regular training opportunities for all library staff members in the federation area.

(5) All Montana public libraries should utilize the professional assistance and guidance available from the Montana state library. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1141 PHYSICAL FACILITIES (1) Each public library building in Montana should be planned to accommodate a program emphasizing the use of library services and materials, public library buildings must also comply with fire, safety, sanitary and other applicable rules in the state and local building codes in Montana that cannot readily accommodate or reach all persons in the local service area should make provisions for alternative or additional services.

(2) Because areas of service (whether local community, county or federation) vary from one part of the state to another, specific standards of size for library buildings are not suggested here Traditional library buildings should be considered as only one way to deliver library service. Innovative systems should be designed to deliver library services through a full range of physical and electronic means to the places where people live and work.

(3) A library which serves as a federation center must obviously have a building sufficient in size to enable it to perform federation-wide services Library service must be provided for persons of all ages, all economic levels, and all races. Consideration of the total population should be given

in regard to library material, the physical facility and patron service.

(4) Other library buildings within the federation may also be large; because of distance from the central library. The public library should encourage the use of the library building for activities other than library related services.

(5) Some basic principles prevail regardless of the size of the building. The public library's physical facilities must reflect its role as a community cultural, information, educational, and rehabilitative agency. In planning new or remodeled facilities, libraries should develop building programs for the guidance of architects. Public library buildings must also comply with fire, safety, sanitary and other applicable rules in the state and local building codes.

(6) Because areas of service (whether local community, county or federation) vary from one part of the state to another, specific standards of size for library buildings are not suggested here. A library which serves as a federation center must obviously have a building sufficient in size to enable it to perform federation-wide services. Other library buildings within the federation may also be large, because of distance from the central library. Some basic principles, however, pertain regardless of the size of the building.
(Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1142 PLANNING FOR BUILDING (1) No library facility should be constructed or remodeled without careful planning and analysis of the library's present service, its planned future services and the projected growth of its service area.

(a) This type of planning frequently will require the assistance of an outside consultant, since experience in planning buildings is valuable and because a consultant can assist in examination of service needs.

(2) When possible the librarian, library board, and key members of the library staff should visit other library buildings of appropriate size and study features that they consider successful and unsuccessful, always asking the staff if they would have done anything differently. "If you were to build again, what would you do differently?"

(3) A building program statement should be prepared by the librarian, or by the consultant if one is to be engaged.

(a) The program statement should define the library's space needs and the relationship between different areas so that the architect can develop a workable plan. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1145 BUILDING FLOOR LAYOUT (1) The building should be so designed that related activities (both of the user and of the staff) are in adjacent areas, and that illogical flow of activity is kept to a minimum.

(2) Public areas should be so arranged as to eliminate problems of supervision; staff on duty at a circulation desk or service desk should have visual control of most of the area.

- (a) Library personnel should be visible and identifiable.
- (b) Library departments and areas should be conspicuously identified.
- (c) Hours of service should be conspicuously displayed.
- (d) The public library building should have space for book display and exhibits. Libraries seek to attract and promote their services rather than simply store volumes. The library should have separate storage for operational supplies away from public areas, but adjacent to work areas. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1147 LIBRARY LIGHTING (1) Lighting for libraries should be provided according to the recommendation of the Illuminating Engineering Society energy efficient and adequate for library functions.

(2) Because of the critical problem of stack lighting, it is essential that placement of light fixtures not be finally determined until location of stacks is fixed.

10.102.1149 LIBRARY COMMUNICATION FACILITIES (1) There should shall be telephones in all public libraries.

(2) Libraries participating in a federation should utilize the most efficient means of communication between member libraries.

(3) There should be rapid communication between bookmobiles and the federation center to handle reference questions and facilitate filling requests rural book delivery systems and the federation headquarters. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

4. Sections 10.101.1101 through 10.101.1149 have been amended as a result of the revision of public library standards by the Montana library association and the Montana state library commission.

10.102.5203 ACCESS TO CIRCULATION RECORDS (1) With the passage of the Library Services and Construction Act in 1957, and in the succeeding years, state libraries have been given an increasing role in the development of library services in the individual states. The Montana state library commission formally adopts the policy which specifically:

(a) recognizes its circulation records and other records identifying the names of library users with specific materials to be confidential.

(b) Advises all librarians and library employees that such records shall not be made available to any agency of state, federal or local government except pursuant to such process, order or subpoena as may be authorized under the authority of and pursuant to federal, state or local law relating to civil, criminal, or administrative discovery procedures or legislative investigatory power.

(c) Resist the issuance or enforcement of any such process, order or subpoena until such time as a proper showing of good cause has been made in a court of competent jurisdiction.

(2) The confidence placed in state libraries through the allocation of funds to foster library development in the states carries with it a responsibility for the state libraries to assume major leadership roles.

(3) (a) All libraries within a state need to be able to look to their state library for guidance, assurance, endorsement and help in carrying out their jobs at the local levels.

(b) This help must go beyond the provision of services and take in the most intangible aspects of leadership.

(c) This is especially true in the area of intellectual freedom, a concept which is fundamental to all library services.

(4) (a) The library profession, through its national association and many individual libraries, has endorsed two intellectual freedom documents - the Freedom to Read Statement and the Library Bill of Rights.

(b) Both are thoughtful and straightforward affirmations of the profession's belief in the right of every citizen to have access to a variety of materials; and, they seek to protect borrowers from individuals and groups who would decide for others what may or may not be available to them in libraries.

(5) (a) Another aspect of the public's intellectual freedom is the borrower's right to privacy in the matter of what materials he shall borrow from the library.

(b) In a number of U.S. cities representatives of federal government agencies have, without benefit of process, order or subpoena, requested the names of library users who have borrowed books in certain subject areas.

(6) (a) The freedom to read is automatically diminished, even if a full range of materials has been made available; if the library user is confronted with the prospect of any individual or agency examining the record of his transactions with the library.

(b) Individuals with no malicious intent may hesitate to borrow materials on certain topics if in doing so they may be subjected to the possibility of harassment or put under a veil of suspicion; their freedom to read has been substantially curtailed and suppressed.

(7) Because this is a relatively new variety of attack on intellectual freedom, many libraries may not know the course to follow when confronted with these requests.

(8) In light of the above:

(a) The Montana state library commission establishes as policy for the Montana state library and recommends similar actions by each Montana library.

(i) that its circulation records be treated as confidential regardless of the source of inquiry;

(i-i) that such records not be made available to any party, governmental or private, unless pursuant to an order or subpoena or other legal process.

(9) (a) The legal process requiring the production of circulation records will ordinarily be in the form of a subpoena duces tecum, requiring the librarian to attend court or the taking of his deposition and may require him to bring along certain designated circulation records.

(b) At this stage in legal proceedings the individual librarian may choose any of the following alternatives:

(i) obey the requirements of the subpoena in full;
(ii) retain an attorney who will attend the court hearing or deposition with the librarian and attempt to obtain a protective order from the court quashing the subpoena because the record search required is unduly burdensome and onerous, or because the material sought is not relevant to the issues of the case.

(iii) attend the court hearing or deposition, but refuse to divulge the records, in which event the individual involved will undoubtedly be charged with contempt of court and fined or jailed. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

5. Section 10.102.5203 has been amended to delete obsolete language and to insure conformance with MCA 2-6-101-111.

10.102.5207 CHARGES FOR LOST OR DAMAGED BOOKS (1) Books and other library materials borrowed from the state library and due on or after January 1, 1977, will be subject to a charge if lost or damaged beyond further reasonable use.

(2) Libraries or individuals reporting books lost or returning damaged books should be informed that a bill for the charge will be mailed to them; no attempt should be made to quote charges over the telephone or to collect payment while the patron waits.

(3) Charges will be made according to the following schedule:

(a) for each item, a service charge of \$2.00 to cover cost of ordering; cataloging and/or processing of replacement; maintenance of records; etc.;

(b) for materials still in print, the current list price will be charged;

(c) out-of-print materials which cannot be replaced will be charged at the list price at the time they were acquired;

(d) for out-of-print materials which will be replaced by another copy of the same title; if it can be obtained, the actual cost of the replacement.

(4) Reports of lost books will be given to the state librarian, or a staff member designated by her, for action.

(5) Any deviation from this policy must be approved by the state librarian, or the staff member designated by her, in advance of action. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.8001 GRADUATE SCHOLARSHIP PROGRAM (1) The Montana state library commission may, as funds are available, offer scholarships for graduate study in library science; the number and value of such scholarship shall be determined by the commission. The Montana state library commission may as funds are available offer scholarships for the graduate studies in library science, educational media or information science. The number and value of such scholarships shall be determined by the commission. The commission shall adopt procedures insuring grants are designed to increase the professional staffing for Montana libraries.

(2) Because this program is designed to increase the professional staffing of public libraries and of the state library, consideration will be given to applicants who plan a career of public library or state library service.

(3) Applicants must further:

(a) present evidence of admission to a graduate program in library science accredited by the American library association;

(b) plan to pursue a course of study leading to a graduate degree from an accredited library school;

(c) agree to work for at least two years in a public library, or in the state library or in a library operation funded wholly or in part by the state library in Montana.

(4) Except in unusual circumstances, the commission will consider only applicants who are recommended by a public library federation which can give reasonable assurance of employment, in an appropriate professional position, upon graduation from library school (or by the state librarian, in the case of applicants considered for future employment at the state library).

(5) Candidates will make written application on forms supplied by the Montana state library.

(a) Qualifying candidates will be interviewed by a member of the state library commission and/or the state library staff.

(b) The state library commission reserves the right not to give any awards if no qualified applicants apply.

(c) The commission's decisions on all matters affecting the scholarships are final.

(6) Recipients may enroll for study in any library school offering a graduate program accredited by the American library association.

(7) Arrangements will be made by the state library commission with the scholarship recipient and the school attended for payment in regular installments or in a lump sum.

(8) The scholarship recipient must repay any amount of the scholarship funds received, on failure to complete the full training program, or failure to accept employment in Montana as outlined, for reasons within his control.

(9) All necessary papers must be completed and received by the Montana state library at least two months before the beginning of the term at the library school.

410) Requests for application forms should be sent to: Scholarship Program, Montana State Library, -930 East Lyndale Avenue, Helena, Montana 59601. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

6. Sections 10.102.5207 and 10.102.8001 have been amended to allow the Montana state library commission to revise changes in procedures and to delete obsolete portions.

7. Those rules proposed to be repealed are as follows:

10.102.1114 SERVICE GOALS The rule proposed to be repealed is on page 10-1217 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1115 LIBRARY'S RELATIONSHIP TO COMMUNITY The rule proposed to be repealed is on page 10-1218 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1123 GUIDES TO THE SELECTION OF BOOKS The rule proposed to be repealed is on page 10-1220 and 10-1221 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1124 JOURNALS WHICH INCLUDE BOOK REVIEWS The rule proposed to be repealed is on page 10-1221 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1125 GUIDES TO THE SELECTION OF NON-BOOK MATERIALS The rule proposed to be repealed is on page 10-1221 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1127 THE BOOK COLLECTION The rule proposed to be repealed is on page 10-1222 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1128 THE PERIODICAL COLLECTION The rule proposed to be repealed is on page 10-1222 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1131 RECORDINGS The rule proposed to be repealed is on page 10-1223 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1132 COLLECTIONS FOR BOOKMOBILES The rule proposed to be repealed is on page 10-1223 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1138 STAFFING REQUIREMENTS The rule proposed to be repealed is on page 10-1224 and 10-1225 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1139 PROFESSIONAL AND SUPPORT STAFF The rule proposed to be repealed is on page 10-1225 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.3601 APPLICATIONS FOR GRANTS The rule proposed to be repealed is on page 10-1249 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.3602 PRIORITIES FOR GRANTS The rule proposed to be repealed is on page 10-1249, 10-1250, and 10-1251 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.3603 USE OF FEDERAL FUNDS TO SUPPORT LIBRARY FEDERATIONS The rule proposed to be repealed is on page 10-1251 and 10-1252 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

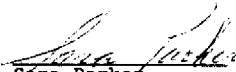
10.102.5208 PHOTOCOPY SERVICE The rule proposed to be repealed is on page 10-1278 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

8. Sections 10.102.114 through 10.102.5208 have been deleted because they are obsolete or have been replaced by other rules.

9. Interested parties may submit their data, views, or arguments concerning the proposed repeals and amendments no later than May 2, 1987 to Sara Parker, Montana State Library, 1515 East 6th Avenue, Helena, MT 59620.

10. The state librarian of the Montana state library has been designated to preside over and conduct the hearing.

11. The authority of the department to make changes is given by MCA-22-1-103(4).


Sara Parker
State Librarian

BEFORE THE MONTANA STATE LIBRARY COMMISSION

In the matter of the pro-	)	NOTICE OF PUBLIC HEARING ON
posed amendment of ARM 10.	)	THE PROPOSED AMENDMENT OF ARM
101.101, repeal of 10.101.202, and	)	10.101.101 AND ADOPTION OF
adoption of new rules I and	)	NEW RULES I - III RELATING
II relating to the Montana	)	TO THE MONTANA LIBRARY SER-
Library Services Advisory	)	VICES ADVISORY COUNCIL AND
Council and Library Services	)	LIBRARY SERVICES AND CON-
and Construction Act (LSCA)	)	STRUCTION ACT (LSCA) GRANTS
Grants)	

To: All Interested Persons:

1. On May 2, 1987, at 1:30 PM, a public hearing will be held in the Mountain Con room, Copper King Inn, 4655 Harrison Avenue South, Butte, MT to consider the amendment of ARM 10.101.101, repeal of 10.101.202, and adoption of new rules I - III relating to the Montana library services advisory council and Library Services and Construction Act (LSCA) grants.

2. The rules proposed to be amended are as follows (matter to be stricken is interlined, new material is underlined):

10.101.101 AGENCY ORGANIZATION (1) and (2) will remain the same.

~~(3). The Montana library services advisory council shall.~~

~~(a) Advise the Montana state library commission and state librarian on the development and well-being of libraries in Montana.~~

~~(b) Represent the views and opinions of citizens, library users and libraries to the Montana state library commission.~~

~~(c) Gather information and make recommendations to the Montana state library commission.~~

~~(d) Advise the Montana state library commission on the Library Services and Construction Act program including, but not limited to, the development of the state plan and its administration, in the long-range and annual programs and the evaluation of library programs, services and activities under the state plan.~~

~~(e) It has no rulemaking authority.~~

(3) The Montana library services advisory council is created by the Montana state library commission with the approval of the Governor in accordance with the provisions of 2-15-122 MCA.

(a) The council shall advise the Montana state library commission on the development and well-being of libraries in Montana; represent the views and opinions of citizens, library

users and librarians to the Montana state library commission; gather information and make recommendations to the Montana state library commission; advise the Montana state library commission on the Library Services and Construction Act Program, including but not limited to the development of the state plan and its administration, the long-range and annual programs and the evaluation of library program services and activities under the state plan.

(b) The composition of the council shall be eighteen members. Seventeen shall serve for two years and may be reappointed for a second term. Represented on the council shall be: users of public library services in each federation area, disadvantaged persons, local public libraries, school libraries, academic libraries, special libraries, library service to the institutionalized, library service to the disabled, state employees, state agency libraries, Montana participation in WCHLIST (White House Conference on Libraries), and the Montana legislature. The president of the Montana library association shall serve a one-year term on the council during the presidency of the association.

(c) The council shall have the authority to establish by-laws for its internal operation. These by-laws may not conflict with MCA 22-1-103, the Library Construction Act, its rules and regulations, and the EDGAR regulations governing programs of the U.S. Office of Education, or with policies established by the Montana state library commission. (Auth. 22-1-103; IMP: 22-1-103.)

3. ARM 10.101.202, proposed for repeal, is found on page 10-1205 of the Administrative Rules of Montana. The new rules as proposed for adoption provide as follows:

RULE I APPEALS PROCESS FOR DENIAL OF A GRANT (1)

Any person or group submitting a proposal for grant funds to the Montana state library commission shall have the right to appeal if the proposal is not funded. The request for the appeal shall be made to the Montana state librarian at 1515 E. Sixth Ave., Helena, MT 59620 (444-3115) within 12 working days of receipt of the letter denying the grant.

(2) Upon receiving a notice of appeal, the state librarian, acting on behalf of the commission, shall convene an independent review committee. The committee shall be composed as follows: a representative named by the appellant who is not from the appellant's library or governing authority; a representative chosen by the chair of the Montana library services advisory council, who is not a council member; a

representative from the library community who is not connected to the appellant, named by the president-elect of the Montana library association.

(3) The independent review committee shall hear the appeal based on procedures which it shall determine. Both the appellant and the state librarian shall have equal opportunity to present testimony either in writing or orally and to respond to points raised by the other party. The independent review committee shall make its findings and recommendations to the Montana state library commission which shall take final action on the appeal. The commission can affirm, deny, or modify the recommendations of the independent review committee.

(4) The state librarian, upon final determination of the appeal by the commission, shall notify the appellant in writing. This notice shall conclude the appeals process. (Auth. 22-1-103; IMP 22-1-103.)

RULE II GRANTS TO LIBRARIES UNDER THE LIBRARY SERVICES AND CONSTRUCTION ACT

(1) The Montana state library commission shall make available funds under the Library Services and Construction Act as appropriated by the Montana legislature. The Montana library services advisory council shall make recommendations to the commission in accord with the purposes of the individual titles of the Library Services and Construction Act. These are title I, public library services - the extension of library services to citizens without services or inadequately served because of distances, physical handicaps or other disadvantages; title II, public library construction - construction of new facilities and remodeling of facilities to improve energy conservation and meet standards, particularly access for the handicapped; title III, interlibrary cooperation - the coordination of resources of school, public, academic and special libraries and the establishment and operation of local, regional and interstate cooperative networks.

(2) The council may recommend to the commission to make funds available through designated projects or through limited calls for proposals to accompany particular objectives or general improvement in library services for residents of Montana or through open competitions for which all libraries shall be eligible as defined in the request for proposals.

(3) In making recommendations to the commission, the Montana library services advisory council shall use the current long-range planning document and shall recommend to the commission priorities based on the long-range plan.

(4) The council shall recommend to the commission the available funds to be used, whether a specific project should be developed or an open or limited competition held, and a time frame for the project.

(5) The council shall encourage participation of libraries and all citizens of Montana on recommending uses for funds under the Library Services and Construction Act.

(6) Prior to the fall meeting of the council, the Montana state library shall announce to libraries the intent of the council to receive concepts for projects under the Library Services and Construction Act grant funds. The library shall encourage submission of ideas for consideration and shall summarize the ideas received for the fall council meeting. The council shall have preliminary discussion on the uses of the funds at its fall meeting and shall identify those in which there is significant interest for further development. Following the fall meeting, the Montana state library shall publicize these to the library community and citizens of the state and shall solicit specific proposals for the council's discussion at its winter meeting. The council shall make its decision on the recommendations for use of the funds and shall present this to the Montana state library commission at its meeting at the Montana library association conference. (Auth. 22-1-103; IMP 22-1-103.)

RULE III LIMITED AND OPEN COMPETITIONS FOR LIBRARY SERVICES AND CONSTRUCTION ACT GRANTS

(1) Upon approval by the Montana state library commission, the state librarian shall submit the proposed project to the U.S. Office of Education. Upon its approval, the state librarian shall issue a limited or open call for proposals. This call shall include the goals and objectives to be accomplished, who is eligible to apply, the procedures for the project and the procedures by which application may be made and the criteria by which competitive grants will be awarded. Libraries, or individuals, or agencies responding to the call shall include in the response a method of evaluation for the project.

(2) If instructed by the council, the state librarian and staff of the Montana state library shall conduct a preliminary screening of proposals dividing those into eligible and not eligible.

(3) The council may appoint a special committee or use a standing committee or may itself as a whole determine what they will recommend for funding based on the criteria used in the request for proposals.

(4) The council shall rank all proposals in priority for funding and rejection. This determination shall be based on the state criteria and a rationale for the determination shall be prepared.

(5) The council shall present its recommendation to the Montana state library commission.

(6) The dates, times and agenda of the council and commission shall be made known to all who submit grant applications. The recommendation being made shall be made known to those who submit grant applications.

(7) Upon action by the commission, the state librarian shall notify those who are awarded a grant and those whose proposals are not funded. The notification shall include the reasons why proposals are not funded. The state librarian shall inform those not receiving grants of the appeal process available to them.

(8) The state librarian shall prepare a contract with that library, individual or agency which received an LSCA grant. The contract shall contain assurances, the responsibilities of the grantee, the responsibilities of the state library commission, a payment schedule, and assurances that the statutes of Montana, its administrative rules and regulations, and appropriate federal requirements are met. (Auth. 22-1-103; IMP 22-1-103.)

4. Rule 10.101.101 (3) is proposed to be amended to clarify the role of the library services advisory council and its composition. The council is required by the Library Services and Construction Act. This rule formalizes that requirement.

5. Rule 10.101.202 is proposed to be repealed and replaced with a new rule, rule I. The new rule I also provides for a grant appeal process with an independent review committee as part of that process. The addition of the independent review committee will further ensure a fair decision making process.

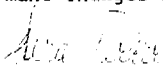
6. Rule II is reasonably necessary to formalize the process for determining what types of grants to libraries will be funded from Library Services and Construction Act funds.

7. Rule III is reasonably necessary to clarify how the grant process will be implemented for Library Services and Construction Act grants.

8. Interested parties may submit their data, views or arguments orally or in writing at the hearing. Written data, views or arguments may also be submitted to: Sara Parker, Montana State Library, 1515 E. 6th Avenue, Helena, MT 59620, no later than May 8, 1987.

9. Mary Hudspeth, chair, Montana state library commission, has been designated to preside over and conduct the hearing.

10. The authority of the commission to make changes is given by 22-1-103(4) MCA.


Sara Parker
State Librarian

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of Proposed) NOTICE OF PROPOSED ADOPTION
Adoption of a New Rule Regarding) OF A NEW RULE EXCLUDING
the Statutory Definition of) CERTAIN FLOTATION DEVICES
"Vessel".) FROM THE STATUTORY
) DEFINITION OF "VESSEL". NO
) PUBLIC HEARING CONTEMPLATED.

TO: ALL INTERESTED PERSONS

1. On April 30, 1987, the Montana Department of Fish, Wildlife and Parks proposes to adopt a new rule exempting certain flotation devices from the definition of "Vessel" found in Sec. 23-2-502(13).

2. The proposed rule provides as follows:

RULE 1 DEFINITION OF "VESSEL" (1) The definition of "vessel" in Sec. 23-2-502(13) does not include inner tubes (motor vehicle type), float tubes (belly boats) and air mattresses when used without mechanical propulsion by one individual.

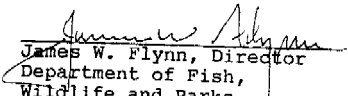
AUTH: Sec. 23-2-502(13), MCA, IMP: Sec. 23-2-502(13), MCA.

3. The Department does not believe that public safety requires that use of the flotation devices it proposes to exempt from the definition of "vessel" be regulated.

4. Interested persons may submit their data, views, or comments concerning this rule to Eileen Shore, Montana Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620 by April 27, 1987.

5. If a person who is directly affected by the proposed rule wishes to express data, views, or comments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request to Eileen Shore no later than April 27, 1987.

6. If the Department receives requests for a public hearing from 10% or 25, whichever is fewer, of the persons who will be directly affected by the proposed adoption by a governmental subdivision or agency, by the administrative code committee, or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of Hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons based on all water recreationists in the State of Montana.


James W. Flynn, Director
Department of Fish,
Wildlife and Parks

Certified to Secretary of State March 16, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of Rule 12.6.701 pertaining to) OF RULE 12.6.701 TO ALLOW
personal flotation devices and) FOR THE USE OF TYPE V
life preservers) DEVICES. NO PUBLIC HEARING
) CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On April 30, 1987, the Fish and Game Commission proposes to amend Rule 12.6.701 to allow type V devices.
2. The proposed amendment provides as follows:

12.6.701 PERSONAL FLOTATION DEVICES AND LIFE PRESERVERS

(1) The following are requirements for personal flotation devices and life preservers upon motorboats and vessels launched upon the waters of this state:

(a) all recreational boats less than 16 feet in length, and all canoes and kayaks of any length must have one type I, II, III device (of a suitable size) or type IV aboard for each person;

(b) a type V device may be substituted for types I, II, III when properly worn on the person at all times while the vessel is in operation.

~~(b)~~(c) all recreational boats 16 feet in length and over, in addition to the above, must have one throwable type IV device (seat cushion with handles or ring buoy);

~~(c)~~(d) type I, II, and III devices shall be readily accessible to all persons on board; the type IV device shall be immediately available for use.

AUTH: Sec. 87-1-301, 87-1-303 and 23-2-521, MCA

IMP: Sec. 23-2-521, MCA

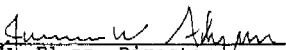
3. This rule is being amended because type V devices are now allowed by United States Coast Guard regulations; Sec. 23-2-521(6) specifically contemplates changes in these rules to keep Montana's regulations in conformity with those of the Coast Guard.

4. Interested persons may submit their data, views and comments concerning this amendment to Eileen Shore, Montana Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena Montana 59620, by April 27, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express data, views, or comments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request to Eileen Shore no later than April 27, 1987.

6. If the Department receives requests for a public hearing from 10% or 25, whichever is fewer, of the persons who

will be directly affected by the proposed amendment, by a governmental subdivision or agency, by the administrative code committee, or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of Hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons, based on all boaters in the State of Montana.


James W. Flynn, Director
Department of Fish, Wildlife
and Parks

Certified to Secretary of State March 16, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
MILK CONTROL BUREAU

IN THE MATTER OF THE AMEND-	)	NOTICE OF AMENDMENT OF
MENT OF RULE 8.79.101	)	RULE 8.79.101 LICENSEE
REGARDING LICENSEE ASSESS-	)	ASSESSMENTS
MENTS)	

TO: ALL INTERESTED PERSONS:

1. On January 29, 1987 the Milk Control Bureau of the Department of Commerce published a notice of amendment of Rule 8.79.301 regarding licensee assessments and reporting of those results at page 56, 1987 Montana Administrative Register, Issue No. 2.

2. The Bureau has amended the rules as proposed. However, it should be noted that in the original notice, the authority of the agency to make the proposed amendment was cited as Section 81-23-202, MCA, and the implementing section cited was 81-23-104, MCA. The correct authority of the agency to make the proposed amendment is Section 81-23-202 and 81-23-104, MCA, and the implementing section is 81-23-202, MCA.

3. The purpose cited in the notice for the proposed amendment was to change the effective date of the rule. It should also be noted the amendment was required by statute.

4. No other comments or testimony were received.

William E. Ross

William E. Ross, Chief
Milk Control Bureau
Department of Commerce

Certified to the Secretary of State March 16, 1987.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT
of rule 16.20.210 relating to	)	OF RULE
frequency of bacteriological)	
sampling	)	(Drinking Water)

To: All Interested Persons

1. On January 29, 1987, the board published notice at page 58 of the 1987 Montana Administrative Register, issue number 2, of the proposed amendment of rule 16.20.210 relating to frequency of bacteriological sampling.

2. The amendment was proposed in order to clarify that even though a system does not serve 25 persons, if the system is public under either of the other definitions in Section 75-6-102(10) (i.e., has 10 or more connections 60 days out of the year or serves 10 or more families daily), then the bacteriological sampling requirements in ARM 16.20.210 do apply to such system.

3. The board has amended the rule as proposed.

4. No testimony or comments were received by the board regarding this amendment.

EDWIN ZAJDLICZ, Chairman
BOARD OF HEALTH AND ENVIRONMENTAL
SCIENCES

by 
WILLIAM J. OPITZ, Deputy Director

Certified to the Secretary of State March 16, 1987.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION
of rules governing)	OF RULES
sex equity in education under)	ARM 24.9.1001
the Montana Human Rights Act.)	THROUGH 24.9.1011

To: All Interested Persons:

1. On October 6, 1986, the Montana Human Rights Commission published notice of proposed adoption of rules implementing §§49-2-307 and 49-3-203, MCA, relating to discrimination in education and governmental services on page 1663 of the 1986 Montana Administrative Register issue Number 19.

2. The Human Rights Commission has adopted the proposed rules with the following changes:

24.9.1001 PURPOSE (1) The purpose of this subchapter is to provide guidelines that will enable educational institutions to prevent and eliminate discrimination on the basis of sex. These rules are interpretive rules. The fact that a particular situation is not addressed in these rules shall not be construed to preclude a cause of action under the Montana Human Rights Act or the Governmental Code of Fair Practices.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-208, MCA.

24.9.1002 DEFINITIONS (1)-(8) remain the same.
~~(9) -- "Sex-bias" means behavior or written materials which, taken as a whole, portray one sex in a role or status inferior to or more limited than that of the other, assign abilities, traits, interests, or activities on the basis of sex stereotypes, denigrate or ridicule one sex, ignore or substantially underrepresent the numerical existence of one sex for reasons not necessitated by the subject matter of the work, or otherwise treat persons in a discriminatory way on the basis of sex.~~

(10), (11), (12) remain the same but will be renumbered.
AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1003 TREATMENT OF STUDENTS (1) Unless an exception is based on reasonable grounds, no student shall, on the basis of sex, be denied equal access to programs, extracurricular activities or services or benefits or be limited in the exercise of any right, privilege, advantage or opportunity.

(2) Because of the potential adverse impact upon female students of restrictions related to pregnancy or parental status, no student shall be discriminated against because of his or her pregnancy or actual or potential marital or parental status unless such action is based upon reasonable grounds.

(a) Unless an exception is based on reasonable grounds, pregnancy shall be treated as any other temporary disability.

(b) Unless an exception is based on reasonable grounds, pregnancy or parenthood shall not be considered cause for dismissal or exclusion from any program or activity.

(c) Participation in special programs provided for pregnant students or students who are parents shall be at the student's option.

(d) Educational institutions shall eliminate administrative and programmatic barriers to school attendance and school completion by pregnant students or students who are parents.

(e) Unless an exception is based on reasonable grounds, no student shall be discriminated against because of his or her actual or potential marital status.

~~(e)~~ (3) No student shall be subjected to sexual intimidation or harassment by any school employee, ~~by other students,~~ or by the effect of any school policy or practice when any employee or agent of the educational institution knew or reasonably should have known of the activity, policy or practice. No student shall be subject to sexual harassment or sexual intimidation by another student on school-owned or controlled property or at any school sponsored or supervised functions or activities when any agent or employee of the educational institution knew or reasonably should have known of the activity.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1004 ADMISSIONS (1) Unless an exception is based on reasonable grounds, no person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by an educational institution.

(2) remains the same.

(3) An educational institution shall not administer or require any test or apply any other criterion as the sole basis for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question. An exception to this rule may exist if it can be shown that alternative tests or criteria which do not have such a disproportionately adverse effect are unavailable.

(4) and (5) remain the same.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1005 GUIDANCE AND COUNSELING SERVICES (1) Unless an exception is based on reasonable grounds, school personnel assigned to provide guidance and counseling services, and all materials used in the provision of those services, shall, without regard to their sex, encourage students to explore and develop their individual interests in vocational programs, employment, and educational opportunities. ~~without regard to sex.~~ This may include encouraging students to consider

nontraditional occupations, careers and educational courses or programs.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1006 ACCESS TO COURSE OFFERINGS AND ACTIVITIES (1)

Unless an exception is based on reasonable grounds, an educational institution shall not provide any course or otherwise carry out any of its educational programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music and adult education courses.

(2)-(6) remain the same.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1007 TEXTBOOKS AND INSTRUCTIONAL MATERIALS (1)

Textbooks and instructional materials, including but not limited to reference books and audiovisual materials, which portray people or animals having identifiable human attributes, must portray males and females in a wide variety of occupational, emotional, and behavioral situations, and present both in the full range of their human potential to avoid sex bias. Nothing in this rule shall be construed to prohibit the study of instructional material deemed appropriate by the instructor for educational purposes. Textbooks and instructional materials are part of an educational program and as such are considered to be part of the terms and conditions or privileges provided by an educational institution under the Montana Human Rights Act and the Governmental Code of Fair Practices. Nothing in these rules shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or instructional materials. However, the Commission encourages educational institutions to utilize textbooks and instructional materials that portray males and females in a wide variety of occupational, emotional and behavioral situations and in the full range of their human potential.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1008 EXTRACURRICULAR AND ATHLETIC ACTIVITIES (1)

Unless based on reasonable grounds, no person, on the basis of sex, shall be denied equality of opportunity to participate in extracurricular activities and athletics sponsored by an educational institution.

(2) Factors to be considered in insuring that athletic activities available to each sex are equal. In determining whether equality of opportunity is available, the factors to be considered, among others, are:

(a) whether the selection of sports and levels of competition effectively accommodates the interests and abilities of both sexes;

(b) the provision of equipment, supplies and services;

(c) scheduling of games and practice times;
(d) travel and per diem allowances;
(e) opportunity to receive coaching and academic tutoring;
(f) qualifications, assignment and compensation of coaches, officials, and tutors;
(g) provision of locker rooms, practice and competitive facilities;
(h) provision of medical and training facilities and services;
(i) provision of housing and dining facilities and services, and;
(j) publicity;
~~(k)--funding-~~
AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1009 FINANCIAL AID (1) Unless an exception is based on reasonable grounds, no person shall, on the basis of sex, be limited or denied financial assistance from an educational institution.
(2) remains the same.
AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1010 HOUSING AND AUXILIARY SERVICES FOR STUDENTS
(1) Unless an exception is based on reasonable grounds, an educational institution shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements or different services or benefits related to housing and auxiliary services.
(2) remains the same.
AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307 and 49-3-203, MCA.

24.9.1011 EMPLOYMENT ASSISTANCE/PLACEMENT (1) Unless an exception is based on reasonable grounds, an educational institution which assists an agency, organization or person in making employment available to any of its students shall ~~(a)--ascertain~~ obtain assurances that such employment is made available without ~~unlawful~~ discrimination on the basis of sex.
~~(b)--shall not render services to any agency, organization or person which unlawfully discriminates on the basis of sex in its employment practices.~~
(2) An educational institution that makes school facilities available to or otherwise assists an agency, person, or organization known to engage in unlawful employment discrimination furthers and sanctions the discriminatory practice.
AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-307, 49-3-202 and 49-3-205.

3. Promulgation of these rules is reasonably necessary to effectuate the purpose of the statutes cited in the authority section of each rule. The rules were initially considered at the request of the Women's Lobbyist Fund.

Further written and oral comments were submitted to the agency demonstrating a need for the rules.

Section 49-2-204, MCA, mandates the Commission to adopt rules to implement the Montana Human Rights Act. Section 49-3-106, MCA, grants the Commission rulemaking authority necessary for the implementation of the Governmental Code of Fair Practices. No other state agency has been given a legislative grant of rulemaking authority to adopt comprehensive rules in the area of sex discrimination in education.

In 1983 HB 879 was introduced at the Montana legislative session. The bill would have given the Office of Public Instruction rulemaking and enforcement powers in the area of sex equity in education. The bill did not pass. The Office of Public Instruction, the Montana High School Association, and the Montana School Board Association, among others, lobbied against enactment of that bill. In one form or another all three groups indicated that the 1974 Human Rights Act prohibited discrimination in education and provided for enforcement through the Human Rights Commission. Therefore, rulemaking and enforcement power vested in the Office of Public Instruction would have been duplicative. Given these two factors, namely, the grant of legislative authority and legislative deference to this authority these rules are reasonably necessary.

In 1984 the U.S. Supreme Court decided the case of Grove City College v. Bell. The court very narrowly construed the application of Title IX of the Education Amendments of 1972, which is the federal law prohibiting sex discrimination in various aspects of education. The Court determined that the prohibitions set forth in Title IX applied only to "programs and activities" of an educational institution that received direct federal funds. This interpretation significantly limits federal jurisdiction. Because there are so many aspects of education no longer covered by Title IX the state agency may be asked to exercise its jurisdiction in the area of sex discrimination in education more frequently in the future. This may account, in part, for the fact that since the Grove City decision more cases of sex discrimination in education have been filed with the Commission.

Much attention has been directed to sex equity in Montana schools in recent years, in response to Title IX requirements, to litigation and settlement requirements, and to good faith efforts to establish accreditation standards and other guidelines requiring non-discriminatory treatment of students. The Commission's purpose in promulgating these rules is to provide educational institutions with uniform guidelines about the requirements of Montana law protecting the right of students to be free from discrimination based on sex, in every stage and in every aspect of their education. The Human Rights Commission has jurisdiction to hear cases involving sex discrimination in education. These guidelines allow educational institutions to know how the Commission interprets the statute.

Specific findings in recent judicial orders state that equity is yet unrealized in Montana. Further evidence of the

existence of sex discrimination in Montana high schools is outlined in a study reported in the Great Falls Tribune and the Independent Record on January 26, 1987. The study is a survey done by the Project on Equal Education Rights. The study indicates that Montana is among the lowest ranked states in preparing young women for college compared to the preparation received by young men.

A discussion of that study followed in a report written by Dan Dolan of the Montana Office of Public Instruction. He concluded that Montana ranks in the top six in the nation in its SAT and ACT test results for students. He confirmed that it is in the bottom four states in preparing young women for college.

4. The Commission received written comments and testimony at the hearing both in support of the proposed rules and in opposition to the proposed rules. The comments and the Commission's response to them are summarized as follows:

(a) Several commenters objected to the rules as duplicative of state and federal laws. The Commission rejects this analysis. The federal law, Title IX of the Education Amendments of 1972, prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance. This law applies only to programs or activities which directly receive federal money and thus does not apply to a majority of the programs and activities of educational institutions in Montana. The presence of federal rules does not preclude states from adopting rules to interpret state statutes. Thirteen states have state rules similar to Title IX rules in place.

With regard to state law, no other state agency has specific statutory authority to promulgate comprehensive rules regarding sex discrimination in education against individuals. No other agency can process complaints alleging sex discrimination in education. While the Human Rights Act does not give the Human Rights Commission authority to establish accreditation standards, neither does the rulemaking power of the Montana Board of Public Education extend to defining sex equity in education for the purposes of processing a private right of action.

(b) Several commenters objected to the inclusion of private institutions in the definition of educational institutions in conflict with legislative intent. The definition of educational institution as used in the rules mirrors the definition set forth at §49-2-101(6), MCA. This definition of educational institution includes public and private institutions. The Commission recognizes that religious organizations, including religious educational institutions, are protected from unconstitutional infringement on the exercise of their religious freedom. This constitutional protection cannot be abrogated by statute or by rule.

(c) Several commenters objected to the definition of sex bias as unnecessary. The Commission agrees with the comments and amends the rule as adopted to reflect the change.

(d) The Montana University System argued that the definition of sexual harassment is too broad. The definition

of sexual harassment set forth in the rules is that outlined in EEOC guidelines and interpreted by federal and state court judges in regard to employment discrimination. Its common usage will assist the Commission in defining sexual harassment in the educational context. It was further suggested that the term "unwelcome" be applied not only to "sexual advances" but also to the other prohibited acts. The Commission agreed with this comment insofar as it is understood that the determinative question is whether the act was unwelcome rather than whether there was consent. See Meritor Savings Bank v. Vinson.

(e) The Montana University System also objected to the definition of sexual intimidation as redundant and requested it be limited to cover only unreasonable behavior. The Commission disagreed that the definition is redundant and agreed that the definition should apply only to unreasonable behavior. The Commission thus added the term "unreasonable" to the definition of sex intimidation to reflect the change.

(f) Several commenters objected to Rule III, 24.9.1003, as not incorporating a reasonable grounds exception. The Commission agreed with these comments and amended the rule as adopted to reflect the change.

(g) Several commenters objected to the Rule III, 24.9.1003, inclusion of pregnancy/parenthood as not specifically prohibited by either Title 49 or the state constitution. The Commission's reasoning is that the rule is only intended to apply when the educational institution's discriminatory practice has an adverse impact against women with children and has little or no adverse impact against men with children. In such instances differing treatment of parents and non-parents would, in effect, constitute sex discrimination. The Commission amended the rules as adopted to reflect the change.

(h) The Montana University System argued that the prohibition against discrimination on the basis of pregnancy goes beyond the statutory prohibition against sex discrimination as "pregnancy" is not specifically mentioned in the statute. The Commission disagrees because of the adverse impact that pregnancy discrimination has upon females and because the condition of pregnancy is gender related. Females should be protected from less favorable treatment by an educational institution than similarly situated males.

(i) Several commenters objected to the language of Rule III, 24.9.1003, as it did not limit the participation of pregnant students in classes where teratogenic chemicals might pose a health risk to the mother or the unborn child. The Commission agrees and has incorporated a reasonable grounds exception into the rule to reflect the propriety of such a defense under the appropriate circumstances. It was also suggested that the effect of teratogenic chemicals also poses a risk to fathers.

(j) The District Superintendent of the Wolf Point Public Schools objected to Rule III, 24.9.1003, as not allowing regulation of physical education classes when pregnant students are participating. In some instances such regulation

may be appropriate where it is reasonable or requested by the student or her doctor.

(k) The District Superintendent of the Wolf Point Public Schools objects to Rule III, 24.9.1003, as requiring an educational institution to provide babysitting services. The Commission disagrees. Nothing in the rules requires that an educational institution provide babysitting services.

(l) Several commenters objected to Rule III, 24.9.1003 as too broad, asserting that it would cover acts of students off campus which are unrelated to school activities. The Commission agreed and amended the rule to make it clear that intimidation or harassment by students is only prohibited on school premises when the educational institution knows or reasonably should have known about the prohibited conduct. The school thus will not have to police off-premises student conduct and will not be responsible for on-premises student conduct that the educational institution does not know about or cannot control. Controllable on-premises conduct that is not controlled would constitute an unjustifiable acquiescence in the discrimination by the educational institution and the discrimination could be imputed to the educational institution itself.

(m) The Montana University System also objects to the prohibition against sexual harassment and sexual intimidation of Rule III, 24.9.1003, as too broad, covering acts of an employee on or off campus, during or after work hours in incidents totally unrelated to the educational institution. While sexual harassment and sexual intimidation may occur off campus, after hours and still be related to the educational institution to the extent that an employee of the educational institution reasonably knew or could have known of the prohibited conduct, the educational institution would not be liable for incidences which are totally unrelated to the educational institution. The Commission amended the rules as adopted to reflect that an educational institution is only responsible for prohibited conduct of which the educational institution knew or reasonably should have known. Each case, of course, will rest on the facts presented.

(n) Several commenters opposed the use of the word "activities" in Rule III, 24.9.1003, without clarification that such activities include extracurricular activities. The Commission agreed with this comment and amended the rules as adopted to reflect the change.

(o) The Montana University System argues that Rule IV, 24.9.1004 prohibits the practice of taking sex into consideration in allocating positions in professional programs presumably pursuant to an affirmative action plan. The Commission does not agree that this Rule would necessarily have this effect, however, the Commission incorporates a reasonable grounds exception into this rule for this and other instances where sex based differentiation is reasonable.

(p) The Montana University System objects to Rule IV, 24.9.1004, as prohibiting the use of tests which have sex disparate scores in that most standardized tests show sex disparities. Several commenters also requested inclusion of a reasonable grounds exception. The Commission amends the Rule

to include a reasonable grounds exception and further amends the rule to include a provision that an educational institution not use inappropriate criterion as the sole basis for admission.

(g) The staff of the Administrative Code Committee objects to Rule V, 24.9.1005 and they requested that it be amended to clarify that school personnel and materials must not take the sex of a student into account in encouraging exploration and development of the student's interests, employment, and opportunities. They further requested that the rule be amended to make it clear that the rule does not mean that the personnel and materials must encourage students to not take sex into account when the students explore and develop their interests. The Commission agreed with this comment and amended the rule to reflect this change.

(r) The Montana University System objects to Rule VI, 24.9.1006, as prohibiting educational institutions from offering sex segregated physical education classes. Sex segregation at the high school level is presently a violation of the Board of Public Education's Accreditation Standard and may not be appropriate at the collegiate level. Self selection in this area will occur to a certain extent. The plain meaning of the statute must guide the Commission's interpretation and the Commission therefore disagreed with the objection.

(s) In an effort to balance the statutory requirements of the Montana Human Rights Act and the Governmental Code of Fair Practices and concerns for academic freedom and freedom of speech the Commission chose to frame the rule regarding textbooks and instructional materials to indicate the Commission's desire to encourage the use of textbooks and educational materials that are not sex biased. Clearly inappropriate use of sex biased textbooks or instructional materials may violate the Human Rights Act and the Governmental Code of Fair Practices.

(t) Several commenters objected to the language of Rule VII, specifically the use of the term "equal" as opposed to "equality of opportunity" in Rule VII. The Commission agreed with these comments and amended the rule as adopted to reflect this change.

(u) Several commenters objected to funding as a specific factor to be considered in determining whether equality of opportunity is available. The Commission deletes "funding" as a specified requirement, acknowledging that the delineated factors are not comprehensive. The Commission recognizes the fact that while the existence of unequal aggregate expenditures for individuals of each sex or male and female teams does not necessarily constitute noncompliance with the Montana Human Rights Act and the Governmental Code of Fair Practices, it may be a factor in assessing equality of opportunity for members of each sex. Furthermore, the factors to be considered in assessing equality of opportunity require funding to some degree. Thus, it is to be considered in evaluating those specific factors.

(v) Several commenters suggested that the Commission make explicit that the athletic seasons be considered in

ensuring equality of athletic participation to both sexes. While the Commission determines the issue to be important it does not feel it appropriate to address the issue in the rulemaking process.

(w) Several commenters objected to Rules IX and X, 24.9.1009 and 1010 as not allowing for the administration or recommendation of candidates for scholarships or awards from private sources which are reserved for male or female recipients. The Commission incorporated a reasonable grounds exception into the rule but a specific exemption would violate the Governmental Code of Fair Practices. See, In re This Trust Created Under the Will of Cram Mont. 606 P.2d 145 (1980).

(x) The Equal Employment Opportunity Affirmative Action Officer from Dawson Community College objected to Rule IX, 24.9.1009(2) as allowing educational institutions to rely upon the "numbers of participants" to further perpetuate sex discrimination in the allocation of financial aid.

The Commission agrees with the commentator that basing aid on the number of current participants may perpetuate unequal distribution of overall funds. The Commission also believes that as the equality of opportunity is realized there will be more emphasis upon and interest in women's and girls' athletics and extracurricular activities. As this is accomplished the numbers of participants should reach a comparable level.

(y) The Montana University Systems objected to Rule XI, 24.9.1011, as requiring the University Systems to police the activities of every company or organization that recruits on campus. The staff of the Administrative Code Committee also objected to the rule. It was the Commission's position that an educational institution should not be obligated to police the off-campus activities of organizations that engage in unlawful employment practices, but should obtain assurances that such organizations make employment available without discrimination on the basis of sex when an educational institution makes school facilities available or otherwise assists an organization in its recruitment process. An educational institution that makes school facilities available to or otherwise assists an agency, person, or organization known to engage in unlawful employment discrimination furthers and sanctions the discriminatory practice. The rule is amended to reflect these changes.

(z) The Montana University System also opposes the term "unlawful discrimination" of Rule XI, 24.9.1011, as unclear. The Commission agrees. Section 1(a) and (b) of the rule, as amended, without the term "unlawful", mirror Title IX. The Commission added a reasonable grounds exception set forth in §49-2-307. This will address the situation where the discrimination is "lawful" or based upon a bona fide occupational qualification.

HUMAN RIGHTS COMMISSION
MARGERIE H. BROWN, CHAIR

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

Certified to the Secretary of State March 16, 1987.

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

In the matter of the	)	NOTICE OF AMENDMENT
Amendment of Rule ARM	)	OF RULE
24.29.3801, regarding	)	ARM 24.29.3801
attorney fee rule)	

TO ALL INTERESTED PERSONS:

1. On December 26, 1986, the Division of Workers' Compensation published Notice of public hearing on the Proposed Amendment of ARM 24.29.3801 regarding the regulation of attorney fees under Sections 39-71-203 and 39-71-613. MCA, at page 2050 of the 1986 Montana Administrative Register. The Notice advised that a hearing would be held on the proposed amendment of the rule on January 21, 1987, at 10:00 a.m. in the Workers' Compensation Building at 5 South Last Chance Gulch, Helena, Montana.

2. On January 21, 1987, at 10:00 a.m., a public hearing was held in the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the amendment of the rule as proposed.

3. The Division amends the rule, effective April 1, 1987, as follows:

24.29.3801 ATTORNEY FEE REGULATION (1) Same as proposed amendment.

(2) An attorney representing a claimant on a workers' compensation claim and who plans to utilize contingent fee arrangement to establish the fee arrangement with the claimant, may not charge a fee above the following amounts:

(a) For cases that have ~~not gone to a hearing before~~ BEEN SETTLED WITHOUT AN ORDER OF a hearings officer, the workers' compensation judge, ~~or other tribunal~~ THE SUPREME COURT, a fee above ~~twenty-five~~ twenty percent ~~(25%)~~ (20%) of the amount of compensation payments the claimant receives due to the efforts of the attorney.

(b) For cases that go to a hearing before ~~a hearings officer~~, the workers' compensation judge, ~~or other tribunal~~ THE SUPREME COURT, ~~thirty-three~~ twenty-five percent ~~(33%)~~ (25%) of the amount of additional compensation payments the claimant receives from an order of the ~~hearings officer~~ workers' compensation WORKERS' COMPENSATION judge, or other tribunal THE SUPREME COURT.

(c) ~~For cases that are appealed to the Montana supreme court, forty percent (40%) of the amount of compensation payments the claimant receives based on the order of the supreme court.~~

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Montana Administrative Register

(3) Same as proposed amendment.

(4) Same as proposed amendment.

(5) Same as proposed amendment.

~~(7)-(6)~~ Attorneys' compensation shall be determined solely by the approved fee arrangement and shall be paid out of the funds received in settlement or recovery or other funds available to the claimant. Upon the occurrence of a hearing before ~~a hearing officer~~, the ~~workers' compensation WORKERS' COMPENSATION court or other duly constituted tribunal~~ THE SUPREME COURT, ~~that THE hearing officer, OR WORKERS' COMPENSATION court or other tribunal~~ shall have exclusive jurisdiction for the award of attorney's fees on the claim against the insurer or employer which shall be credited to the fee due from the claimant.

~~(8)-(7)~~ In the event a dispute arises between any claimant and an attorney relative to attorney's fees in a workers' compensation claims, ~~the administrator~~, upon request of either the claimant or the attorney or upon notice of any party of a violation of this rule, ~~the administrator or his designee~~ shall review the matter and issue his order resolving the dispute pursuant to procedures set forth in ARM 24.29.201, et seq. The fee contract shall clearly identify the rights granted by this subsection.

(8) Same as proposed amendment.

4. The rationale for amending ARM 24.29.3801 is to establish a reasonable limit to the attorney fees which may be charged to a workers' compensation claimant by his attorney. The rule as amended also more clearly sets forth those benefits upon which an attorney fee may be based. The proposed amendment of this rule is authorized by Section 39-71-203, MCA, and implements Section 39-71-613, MCA.

5. The Division has thoroughly considered all comments received on the proposed rule. Following is a summary of the comments received from the public and the Division's responses.

a. Comment: Subsection (3)(c) should not bar an attorney from receiving a fee based on an impairment rating in a disputed liability case.

Response: The Rule would not preclude a fee on an impairment rating in a disputed liability case as all benefits would be disputed and would be obtained through the attorney's efforts.

b. Comment: The \$75.00 hourly rate in subsection 4 is too low and should be left at, "a reasonable hourly rate."

Response: The rate of \$75.00 per hour is reasonable based on the experience of the Division and recent Court testimony. The establishment of a maximum hourly rate is appropriate in order to give interested parties notice and

to resolve disputes regarding what is "a reasonable hourly rate."

c. Comment: The reduction of the contingent percentage fee in subsection (2) will make it more difficult for injured workers to find competent counsel.

Response: This relatively minor reduction in the contingent percentage maximums is consistent with the average actual fee charges noted by the Division and does provide reasonable remuneration to attorneys with greater net benefits to claimants.

d. Comment: The \$75.00 per hour maximum on claimant's attorney fees is unconstitutional because the Division is not also limiting the rate of fees for insurer's attorneys.

Response: Section 39-71-613, MCA, authorizes the Division to limit claimant's attorney fees but not insurer's attorney fees. There is a reasonable basis in this distinction in the protection of injured workers from excessive fees while there is no such reasonable concern for the expenses of insurance companies.

e. Comment: Only (e) of subsection (3) is appropriate as an expression that fees may only be based on benefits obtained due to the actual, reasonable and necessary efforts of the attorney.

Response: Existing subsection (3)(a) and new subsections (3)(b) through (e) have been added to assist in explaining what benefits are not obtained due to the efforts of an attorney, and thus, are not the basis for benefits.

f. Comment: These limitations on contingent percentage and hourly fees do not take into consideration the overhead of operation of an attorney's office.

Response: The fees as proposed to be amended do provide reasonable remuneration to attorneys considering the nature of these cases where liability is not usually in dispute but the issue centers around the amount of benefits to be received by the claimants. The lower maximum fees are proposed in order to assure that a claimant does not bear the burden of excessive attorney fees.

g. Comment: The Division has authority to regulate attorney fees on a case by case basis but does not have authority to make rules setting maximum fees.

Response: Sections 39-71-613 and 39-71-203, MCA, authorize the Division to make rules regarding the regulation of attorney fees. The maximum fees set forth in the rule are within the scope of authority in the statutes in giving interested parties notice of what maximum fees the Division will approve.

h. Comment: The 25%-33%-40% contingency arrangement is common around the state and should be retained.

Response: This arrangement may be appropriate to tort actions in which the attorney must prove both liability

and damages. However, in workers' compensation cases, liability is not usually at issue and an attorney need only show the amount of damages his client has suffered. This difference in the effort required by the attorney justifies a difference in his rate of remuneration.

i. Comment: There is no need to submit a fee agreement to the Division within thirty (30) days of beginning representation.

Response: Establishing the fee relationship between attorney and client as early as possible prevents misunderstandings later on. The attorney must obtain written authorization from his client anyway in order to obtain a copy of the Division's file. This provision also assures notice of representation so the attorney-client relationship is respected.

j. Comment: A percentage rate should be increased for each higher step of involvement of the attorney.

Response: The proposed amendment does increase the percentage level between settlements and court actions although it does eliminate the upgrade between the trial court and the Supreme Court. The attorney will be reasonably compensated for his extra effort if he obtains a greater base of benefits on which to calculate his fee between the trial court and the Supreme Court.

k. Comment: Subsection (7) allowing a party outside of the attorney-client agreement to notify the Division of a violation of the rule would encourage interference by insurers and other parties.

Response: The Division has an obligation to look out for the best interests of claimants and this is a reasonable tool to obtain information regarding excessive fees charged to claimants.

l. Comment: The rule violates the doctrine of separation of powers as an executive branch agency is purporting to regulate attorney fees in judicial branch proceedings.

Response: The Workers' Compensation Court is an executive branch agency not a judicial branch agency. Further, the Supreme Court has already determined that regulation of attorney fees by the Division does not intrude on the jurisdiction of the judicial branch.

m. Comment: Subsection (2) fails to cover the situation where a case goes to hearing but settles before an order is issued.

Response: Subsection (2)(a) will be revised to include this situation.

n. Comment: The elimination of old Subsection (4) allowing an increase in the maximum fee rate for good cause should be retained.

Response: This provision which has been rarely used in the past is being eliminated in order to remove an uncertainty from the maximum rates set in the rule.


o. Comment: The Division does not have authority to

regulate attorney fees in cases which are before the Workers' Compensation Court.

Response: Section 39-71-613, MCA, gives the Division the authority to regulate the fee arrangement between the claimant and his attorney in "any workers' compensation case." This authority is clearly distinguished from the authority of the Workers' Compensation Court to assess attorney fees against the insurer for the benefit of the claimant as provided in Section 39-71-614, MCA.

p. Comment: (Administrative Code Committee) reference to "other tribunal" in Subsection (2)(b) should clearly refer to the Supreme Court.

Response: The rule will be revised to conform with this comment.


ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: March 16, 1987

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF THE ADOPTION of
of Rules I (42.6.301) through)	Rules I (42.6.301) through
XIV (42.6.314) relating to)	XIV (42.6.314) relating to
administrative income with-)	administrative income with-
holding for child support.)	holding for child support.

TO: All Interested Persons:

1. On January 29, 1987, the Department published notice of the proposed adoption of Rules I through XIV (42.6.301 through 42.6.314) relating to administrative income withholding for child support at pages 90 through 97 of the 1987 Montana Administrative Register, issue no. 2.

2. The Department has adopted Rule I (42.6.301) with the following changes. Rules II through XIV (42.6.302 through 42.6.314) are adopted as proposed.

42.6.301 DEFINITIONS For the purposes of ARM 42.6.301 through 42.6.314, the following definitions apply:

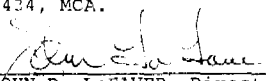
(1) Insofar as they are not inconsistent with, or clarified by the more specific definitions set forth in ARM 42.6.301 through 42.6.314, the definitions set forth in 40-5-403, MCA, are adopted and incorporated by reference. A copy of 40-5-403, MCA, may be obtained from the Child Support Enforcement Program, Old Livestock Building, Helena, Montana 59620.

(2) through (6) remain the same.

3. A public hearing was held on February 20, 1987, to consider the proposed adoption of these rules. No persons appeared to oppose the proposed adoptions. Dennis Shober of the Child Support Program, Investigations and Enforcement Division, appeared on behalf of the Department. No other comments or testimony were received.

The addition made in ARM 42.6.301(1) was made to notify interested persons where they could obtain the statutes incorporated by reference.

4. The authority for the rules is 40-5-202, 40-5-405, MCA, and § 21, Ch. 571, L. 1985, and the rules implement 2-15-112, 40-5-203(3), 40-5-401 through 40-5-434, MCA.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 03/16/87

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of Rule 42.17.113 relating to)	Rule 42.17.113 relating to
reporting requirements for)	reporting requirements for
withholding taxes.)	withholding taxes.

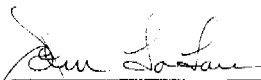
TO: All Interested Persons:

1. On January 29, 1987, the Department published notice of the proposed amendment of Rule 42.17.113 relating to reporting requirements for withholding taxes at pages 98 and 99 of the 1987 Montana Administrative Register, issue no. 2.

2. The Department has amended these rules as proposed.

3. A public hearing was held on February 20, 1987, to consider the proposed amendment of this rule. No persons appeared to oppose the proposed amendment. Charlotte Maharg, James M. McKeon, and Melanie Ortloff of the Income Tax Division appeared on behalf of the Department. No other comments or testimony were received.

4. The authority for the Department to make the amendment is based on § 15-30-305, MCA, and the rule implements § 15-30-204, MCA.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 03/16/87

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

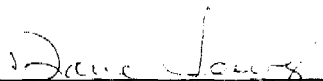
In the matter of the adoption	)	NOTICE OF THE ADOPTION OF
of Rule 46.11.131 pertaining	)	RULE 46.11.131 PERTAINING
to the Food Stamp Employment	)	TO THE FOOD STAMP EMPLOY-
and Training Program	)	MENT AND TRAINING PROGRAM

TO: All Interested Persons

1. On February 13, 1987, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule 46.11.131 pertaining to the Food Stamp Employment and Training Program at page 153 of the 1987 Montana Administrative Register, issue number 3.

2. The Department has adopted Rule 46.11.131, FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM, as proposed.

3. No comments other than the Department's supporting testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State March 16, 1987.

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 46.12.525,	)	RULES 46.12.525, 46.12.526
46.12.526 and 46.12.527	)	AND 46.12.527 PERTAINING TO
pertaining to outpatient	)	OUTPATIENT PHYSICAL THERAPY
physical therapy services	)	SERVICES

TO: All Interested Persons

1. On February 13, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.525, 46.12.526 and 46.12.527 pertaining to outpatient physical therapy services at page 145 of the 1987 Montana Administrative Register, issue number 3.

2. The Department has amended the following rules as proposed with the following changes:

46.12.525 OUTPATIENT PHYSICAL THERAPY SERVICES, DEFINITION (1) ~~Outpatient-~~ "Physical therapy" means the evaluation, treatment, and instruction ~~of human beings~~ to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction ~~and pain, injury,~~ and any bodily or mental disability BY THE USE OF THERAPEUTIC EXERCISE AND REHABILITATIVE PROCEDURES. Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, light, water, electricity, and sound. Physical therapy also includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures, the establishment and modification of treatment, and consultative, educational, and other advisory services, and instruction and supervision of supportive personnel.

Subsections (2) and (3) remain as proposed.

(4) "Maintenance therapy" means repetitive services required to maintain functions which do not involve complex and sophisticated physical therapy procedures, or the judgment and skill of a qualified physical therapist; AND WITHOUT THE EXPECTATION OF SIGNIFICANT PROGRESS.

Subsection (5) remains as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.526 OUTPATIENT PHYSICAL THERAPY SERVICES, REQUIREMENTS Subsections (1) through (3) remain as proposed.

(a) The services must be considered under accepted standards of ~~medical~~ PHYSICAL THERAPY practice to be a specific and effective treatment for the patient's condition;

Subsections (3)(b) through (10) remain as proposed.

(911) A physical ~~therapy~~ THERAPIST'S assistant, student or aide may assist in the practice of physical therapy under direct supervision of the licensed physical therapist who is responsible for and participates in the patient's treatment program.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.527 OUTPATIENT PHYSICAL THERAPY SERVICES, REIMBURSEMENT Subsections (1) through (2) remain as proposed. "EVALUATION AND INSTRUCTION" through "PROCEDURES" remain as proposed.

ONE PROCEDURE, initial 30 minutes, each visit ... 9.99
19.97

"9-97110 Therapeutic exercises" through "9-97220 Isolation tub 26.62" remain as proposed.

9-97500 Orthotics training (dynamic bracing, splinting); upper extremities;
initial 30 minutes 9.99
19.97

9-97501 Each additional 15 minutes 5.00

9-97520 Prosthetic training, initial 30
minutes, each visit 9.99
19.97

9-97521 Each additional 15 minutes 5.00

9-97530 Kinetic activities to increase coordination, strength or range of motion, one area (any two extremities or trunk); initial 30 min. ... 9.99
19.97

9-97531 Each additional 15 minutes 5.00

ACTIVITIES OF DAILY LIVING (ADL) AND
DIVERSIONAL ACTIVITIES

9-97540 Initial 30 minutes, each visit 10.00
19.97

9-97541 Each additional 15 minutes 5.00

WHIPPOOL POOL THERAPY

9-97240	Initial 30 minutes, each visit	7.97
		<u>15.97</u>
9-97241	Each additional 15 minutes	4.00
		<u>5.00</u>
9-97039	Additional modalities (with whirlpool) (specify)	3.00

TESTS AND MEASUREMENTS

9-97700	Office visit, including one of the following tests or measurements, with report, initial 30 minutes, each visit	16.64
		<u>33.28</u>
	a. Orthotic check-out	
	b. Prosthetic check-out	
	c. Activities of daily living check-out	
9-97701	Each additional 15 minutes	8.32
		<u>5.00</u>
9-97720	Extremity testing for strength, dexterity or stamina; initial 30 minutes, each visit	16.64
		<u>33.28</u>
9-97721	Each additional 15 minutes	8.32
		<u>5.00</u>
9-97752	Muscle-testing, torque-curves-during isometric-and-isokinetic-exercise (e.g., by use of Cybex machine)----	33.28

MUSCLE TESTING

9-95831	Manual, extremity or trunk	33.28
9-95832	Hand (with or without comparison with normal side)	33.28
9-95833	Total evaluation of body, excluding hands	33.28
9-95834	Total evaluation of body, including hands	33.28
9-95842	Muscle testing, electrical REACTION OF DEGENERATION, CHRONAXY, GALVANIC/TETANUS RATIO, ONE OR MORE EXTREMITIES, ONE OR MORE METHODS	33.28

ELECTROMYOGRAPHY

95860	One extremity and related para- spinal areas	66.55
95861	Two extremities and related para- spinal areas	66.55

95862	Three extremities and related para- spinal areas	66.55
95864	Four extremities and related para- spinal areas	66.55
9-97752	MUSCLE TESTING, TORQUE CURVES DURING ISOMETRIC AND ISOKINETIC EXERCISE (E.G., BY USE OF CYBEX MACHINE)	66.55

AUTH: Sec. 52-6-113 MCA

IME: Sec. 53-6-101 and 53-6-141 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: Amendments to Rule 46.12.526(3)(a) and (3)(d) refer to accepted and recognized standards of physical therapy practice. How will the Department define these standards? What standards will be used?

RESPONSE: The Department contracts with the Montana/Wyoming Foundation for Medical Care (M/WMC) for the purpose of determining appropriate standards of care. Licensed physical therapists conduct the peer review for the M/WMC.

COMMENT: Proposed rule 46.12.527 changes the reimbursement for some procedures to one-half of the current Medicaid fee. These fees are less than the fee for a modality even though procedures are more labor intensive.

RESPONSE: The adoption of the Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPC) required the Department to establish a fee schedule for time increments. The fee was not changed but, rather, was divided by four to establish the fee per 15 minute increments. Therefore, the proposed rule shows one-half the current fee for the first 30 minute increment and one-fourth the fee for each 15 minute increment thereafter. The Department received adverse comments from providers regarding the proposed reimbursement schedule. Providers indicated that most procedures are completed in 30 minutes, so the new methodology amounts to a cut in reimbursement. After considerable research and careful consideration, the Department concurs. The rule has been revised to allow the original fee for the first 30 minutes and \$5.00 for each 15 minute increment thereafter. The fiscal impact of this adjustment is minimal.

COMMENT: Rule 46.12.527 lists codes 9-97240, 9-97241 and 9-97039 under the general heading of "Whirlpool". As this is a procedure, the heading should appropriately be "Pool Therapy".

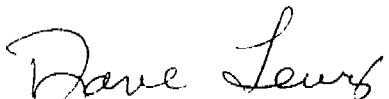
RESPONSE: The Department agrees and has made the requested change.

COMMENT: The definition of "physical therapy" should include the means of treatment.

RESPONSE: The Department agrees. The definition of "physical therapy" in ARM 46.12.525(1) has been amended to include the means of treatment.

COMMENT: Various providers suggested certain procedures be reordered or added into the procedural coding system to clarify the system.

RESPONSE: The Department agrees and has made the suggested changes.



Director, Social and Rehabilitation Services

Certified to the Secretary of State March 16, 1987.

VOLUME NO. 42

OPINION NO. 9

ADOPTION - Lawyer or doctor prohibited from acting as intermediary;
ATTORNEYS - Scope of permissible involvement in adoption placement;
SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - Lawyer or doctor prohibited from acting as intermediary in adoption placement;
ADMINISTRATIVE RULES OF MONTANA - Section 46.5.405(1)(a);
MONTANA CODE ANNOTATED - Sections 40-8-103(10), 53-4-402, 53-4-407;
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No. 96 at 520 (1976).

HELD: No person, including a physician or an attorney, may assist in procuring or selecting an adoptive home for a minor child, even if requested by the child's natural parents, unless licensed as a child-placing agency under section 53-4-402, MCA.

13 March 1987

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

Dear Mr. Lewis:

You have asked my opinion on the following questions concerning the role of intermediaries in arranging an adoption:

1. May a person collect information on couples desiring to adopt a minor child and give such information to a birth mother wishing to place her child for adoption?
2. May a person notify prospective adoptive parents of the potential availability of a minor child for adoption and make

arrangements for the couple to meet the birth mother wishing to place her child for adoption?

3. May a person act as a "middle man" between a prospective adoptive couple and a birth mother wishing to place her minor child for adoption for the purpose of meeting with each of the parties and arranging for an adoption so that the identities of the parties are not revealed to each other?
4. May a person refer a birth mother wishing to place her minor child for adoption to a lawyer representing clients who wish to adopt a child for the purpose of arranging an adoption between the parties?

The questions arise from the practice among certain individuals in Montana, primarily physicians and attorneys, of arranging adoptions. Although our statutes were amended in 1981 to allow parents to independently place children for adoption, the statutory proscriptions against individuals, other than personnel of the Department of Social and Rehabilitation Services or a licensed agency, arranging an adoption remain applicable to all persons who assist a natural mother or potential adoptive parent. Thus, an Attorney General's Opinion issued prior to the 1981 amendments holding that an attorney could not place a child for adoption is still controlling. 36 Op. Att'y Gen. No. 96 at 520 (1976). All of the questions you raise involve some form of assistance by an intermediary in completing an adoption and this conduct is uniformly prohibited.

Section 53-4-402, MCA, sets forth the parameters of who can act as a child-placing or adoption agency:

No person shall act as an agency for procuring or selecting proposed adoptive homes or placing minor children in proposed adoptive homes or soliciting persons to adopt minor children or arranging for persons to adopt minor children who is not the holder of a license secured under the provisions of this part. ...

Violation of this provision is a misdemeanor punishable by a fine not exceeding \$1,000. § 53-4-407, MCA. Administrative rules have also been promulgated that give further definition to what constitutes a child-placing agency for purposes of the licensing requirement. Section 46.5.405(1)(a), ARM, states:

(1) "Child placing agency" (agency) means any corporation, partnership, association, firm, agency, institution or person who places or who arranges for the placement of any child with any family, person, or facility not related by blood or marriage, either for foster care or for adoption.

(a) "To arrange for placement" means to act as an intermediary by assisting a parent, guardian or legal custodian to place or plan to place a child with persons other than persons related to the child. [Emphasis supplied.]

The factual situations that you have presented, including the furnishing of information about potential adoptive parents to natural mothers, fall within this interpretation of arranging for placement since the involved activities directly assist one party with placement of a child with another party.

In Montana Department of Social and Rehabilitation Services v. Angel, 176 Mont. 293, 577 P.2d 1223 (1978), the Supreme Court considered issues very similar to those you have raised. The basic question was whether a medical doctor who referred unwed mothers to couples who desired children was acting as an adoption agency. The doctor in Angel referred the natural mother and adoptive parents to a particular lawyer who then represented the adoptive parents in adoption proceedings in the courts. The practice was enjoined by the district court until a license was obtained. The Supreme Court affirmed that decision and held that the Legislature intended to make the procuring or soliciting of adoptive homes the exclusive function of licensed adoption agencies:

The granting of an exception to the licensing statutes for physicians or attorneys so that they can place children for adoption without a license can only be done by the legislature.

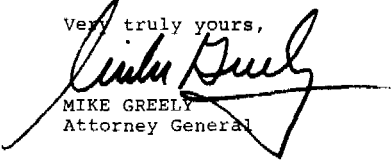
Montana Department of Social and Rehabilitation Services v. Angel, 176 Mont. at 297, 577 P.2d at 1225. While subsequent to Angel the Legislature authorized natural parents, in addition to the Department and licensed child-placing agencies, to place a child for adoption (1981 Mont. Laws, ch. 530, §§ 10, 11), the term "placement for adoption" in the Montana Uniform Adoption Act, §§ 40-8-101 to 128, MCA, has a unique definition for purposes of that statute, and the 1981 amendment to the act cannot be viewed as modifying the licensure requirements in section 53-4-402, MCA. See § 40-8-103(10), MCA ("'[p]lacement for adoption' means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child").

Lastly, this opinion should not be read as precluding physicians or attorneys from discharging their traditional medical and legal functions with respect to natural or possible adoptive parents. A physician may, for example, perform appropriate medical or psychological tests and testify concerning matters within his field of expertise relevant to a particular adoption proceeding. An attorney may similarly advise a party concerning adoption requirements and represent that party in adoption proceedings. Section 53-4-402, MCA, does not prohibit performance of these customary duties but it does preclude any person, including a physician or attorney, from procuring or soliciting adoptive homes for minor children. As indicated by Angel, the distinction between proper and improper conduct is clear.

THEREFORE, IT IS MY OPINION:

No person, including a physician or an attorney, may assist in procuring or selecting an adoptive home for a minor child, even if requested by the child's natural parents, unless licensed as a child-placing agency under section 53-4-402, MCA.

Very truly yours,



MIKE GREELY
Attorney General

6-3/26/87

Montana Administrative Register

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1986. This table includes those rules adopted during the period December 31, 1986 through March 31, 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 December 31, 1986, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1986 or 1987 Montana Administrative Register.

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