MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

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

In the matter of the proposed amendment of ARM 6.2.122	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 6.2.122

TO: All Interested Persons.

1. On July 25, 1988, at 9:00 a.m., a public hearing will be held in Room 270, Mitchell Building, Helena, Montana, to consider the amendment of ARM 6.2.122.

2. The proposed rule amends ARM 6.2.122.

3. The text of the proposed amendment is as follows:

6.2.122 TEMPORARY CEASE AND DESIST ORDERS (1) ~~When~~ ~~a~~ ~~cease~~ ~~and~~ ~~desist~~ ~~order~~ ~~is~~ ~~issued~~ ~~without~~ ~~regard~~ ~~to~~ ~~notice~~ ~~and~~ ~~opportunity~~ ~~for~~ ~~a~~ ~~hearing,~~ ~~such~~ ~~order~~ ~~shall~~ ~~be~~ ~~designated~~ ~~as~~ ~~a~~ ~~"temporary"~~ ~~cease~~ ~~and~~ ~~desist~~ ~~order.~~

~~(2) When~~ If the commissioner issues a temporary cease and desist order~~, is issued by the commissioner,~~ the respondent shall have ~~fifteen~~ (15) days from receipt of the order to make a written request for a contested case hearing on the allegations contained in the order. The hearing ~~shall~~ ~~when~~ must be held within ~~thirty~~ (30) days of the commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties or by order of the hearing examiner. If the respondent does not request a ~~no~~ hearing ~~is required~~ within ~~fifteen~~ (15) days of receipt of the order by the respondent and the commissioner does not order a hearing, ~~and none is ordered by the commissioner,~~ the order ~~shall~~ becomes ~~permanent~~ final.

AUTH: 30-10-107 MCA; IMP: 30-10-305 MCA

4. The amendments to ARM 6.2.122 are reasonably necessary to eliminate confusion created by entitling cease and desist orders as "temporary". The amendments are also necessary to permit the hearing examiner to extend the 30-day hearing deadline, created by rule, if the parties cannot agree to an extension but justice requires one.

5. Interested persons may present oral or written comments at the hearing. Written comments may also be submitted to Kathy M. Irigoin, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604 before July 22, 1988.

6. Kathy M. Irigoin has been designated to preside over and conduct the hearing.

7. The commissioner's authority to amend the rule is 30-10-107, MCA, and the rule implements 30-10-305, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State this 13th day of June, 1988.

MAR Notice No. 6-21 12-6/23/88

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a rule pertaining to examination fee for process servers.	))))	NOTICE OF PROPOSED ADOPTION OF A RULE PERTAINING TO EXAMINATION FEE FOR PROCESS SERVERS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 1, 1988, the Department of Commerce proposes to adopt a rule specifying the procedure and fee applying to the examination for registration as a process server.

2. The proposed new rule provides as follows:

RULE I "PROCESS SERVERS -- EXAMINATION FEE (1) The examination fee for process servers shall be $60."

Auth: 25-1-1104, MCA Imp: 25-1-1104, MCA

REASON: The rule is necessary to establish a fee that will cover the costs of developing the process server handbook and administering the examination.

3. Interested persons may submit their data, views, or arguments concerning the proposed rule in writing to W. James Kembel, Administrator, Business Regulations Division, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620, no later than July 25, 1988.

4. If a person who is directly affected by the proposed adoption wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit his request along with any written comments he has to W. James Kembel, at the address noted in paragraph 3, no later than July 25, 1988.

5. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption or from the Administrative Code Committee of the legislature; from a government subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons based on 100 persons estimated to have interest in the rule.

KEITH COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State June 13, 1988

12-6/23/88 MAR Notice No. 8-2-1

BEFORE THE STATEHOOD CENTENNIAL OFFICE
OF THE STATE OF MONTANA

In the Matter of Proposed Adoption of Rules for Awarding of Centennial Grants	))))	NOTICE OF PUBLIC HEARING ON NEW RULES I THROUGH VIII FOR AWARDING CENTENNIAL GRANTS

TO: All Interested Persons:

1. On July 14, 1988 at 1:30 p.m. a public hearing will be held in Room 108 of the State Capitol Building in Helena, Montana, to consider the proposed adoption of Rules I through VIII for awarding of Centennial grants.

2. The proposed rules do not replace or modify any existing rules.

3. The proposed rules read as follows:

RULE I GENERAL POLICY FOR CENTENNIAL GRANTS (1) Pursuant to the act, the office is authorized to make grants of funds for activities in furtherance of the centennial. This sub-chapter provides the procedures that the office will use in processing grant applications and awarding grants and the criteria that the office will use to determine whether a grant application is minimally qualified for funds. An application that is not submitted in accordance with the procedure or does not meet these minimum criteria will not be funded. The office may, however, in its discretion elect not to fund applications that are submitted in accordance with the procedures and that meet the criteria. This sub-chapter creates no right to grant funding.
Auth: 2-89-106, MCA Imp: 2-89-105, MCA

RULE II DEFINITIONS For the purposes of this chapter, the following terms apply:

(1) "Act" or "the act" means Title 2, chapter 89, part 1, Montana Code Annotated.

(2) "Affiliate" means an entity sanctioned by the Montana centennial commission to share with the state in sponsoring projects to observe the centennial.

(3) "Applicant" means a person seeking a grant for a project.

(4) "Commission" means the advisory council known as the Montana statehood centennial commission established in 2-89-107, MCA.

(5) "Lasting heritage project" means project resulting in a permanent structure, memorial, or monument; a continuing endowment; or an enduring work of art or literature.

(6) "Lieutenant governor" means lieutenant governor of Montana, who is also the head of the statehood centennial office and the chairman of the Montana statehood centennial commission.

(7) "Office" means the Montana statehood centennial office established in 2-15-389, MCA.

(8) "Person" means a natural person, partnership, corporation, trust, county, city, town, other unit of local

government with authority to contract for and administer a centennial grant, or a tribal government.

(9) "Project" means a planned and coordinated event, action or series of actions or events addressing an objective consistent with the policy and purposes of the observance of Montana's statehood centennial.

(10) "Public benefits" means those benefits that accrue to the citizens as a group and enhance the common well-being of the people of Montana.

(11) "Quarter" means a three month period of time. Quarters begin on January 1, April 1, July 1, and October 1.

(12) "Transitory festival project" means a project staged during the period November 8, 1988 through December 31, 1989 that is not a lasting heritage project.

Auth: 2-89-106, MCA Imp: 2-89-105, MCA

RULE III ELIGIBILITY CRITERIA (1) Only centennial projects that have been licensed pursuant to ARM 30.3.104 or persons who are centennial affiliates are eligible for grant funding. Generally, only non-profit projects are eligible for funding. However, a for-profit project may be eligible if the applicant demonstrates exceptional benefit to the centennial.

Auth: 2-89-106, MCA Imp: 2-89-105, MCA

RULE IV APPLICATION PROCEDURES (1) An applicant shall submit an application on forms provided by the office. The application must be signed by the applicant or an authorized agent of the applicant. A separate application must be submitted for each separate project and each separate grant.

(2) The application must contain the following information:

(a) the name and address of the applicant;

(b) the officers or principals of the applicant, if any;

(c) a description of the project proposed for funding including its category (lasting heritage or transitory festival), date, location, public benefits to accrue to the centennial, and the number of persons to be served by the project;

(d) a specification of the costs of the project;

(e) identification of other possible sources of funding known to the applicant, either to supplement or substitute for the centennial grant. If a source of funding supplemental to the centennial grant is identified, the applicant shall state that the other funds are in hand or explain how they will be obtained;

(f) the status of the project and applicant as profit or non-profit;

(g) the names and addresses of the person who will supervise the project and of other key personnel and a description of the qualifications of these persons to carry out the project and comply with grant conditions, including bookkeeping and reporting;

(h) any other information the applicant wishes the office to consider; and

(i) other information required on or with the application form.

(3) Whenever the office receives an application that does not contain the information required in (2) above, it shall in a timely fashion advise the applicant in writing of the deficiencies and need not further process the application until these deficiencies are remedied.

(4) An applicant may amend its application at any time prior to office action on that application. An amendment must be submitted in writing and be signed by the applicant or an authorized agent of the applicant.

(5) The office may, at any time during the review of a grant application, require the applicant to submit additional information relevant to office review. The office need not process the application further until the information is supplied.

Auth: 2-89-106, MCA Imp: 2-89-105, MCA

RULE V APPLICATION REVIEW PROCEDURE (1) The office shall process and review applications each quarter, beginning with the third quarter of 1988. To be entitled to review for a particular quarter, an application must be received in the office by the 10th day of the second month of the quarter. The office may for good cause waive this deadline. Whenever it receives amendment to an application pursuant to Rule IV (4) after the deadline or requires information pursuant to Rule IV (3) or (5), the office may in its discretion process the application as if the entire application had been received at the time the amendment or supplemental information was received.

(2) Before making its decision on a grant application, the office shall obtain the advice of the commission unless the lieutenant governor determines that exceptional circumstances require action before the next commission meeting.

(3) By the last day of the quarter, the office shall make a decision on each application to:

(a) award the grant at the level of funding applied for;

(b) award the grant at a different level of funding than that applied for;

(c) deny the grant application; or

(d) defer consideration of the application to a future application period.

(4) The office shall notify the applicant in writing of its decision. If the decision is to deny or defer consideration of the application, the office shall give its reasons in writing so that the applicant can determine whether it wishes to submit a modified proposal during a future quarter.

(5) A grant made pursuant to (3)(a) or (b) above is subject to the conditions listed in Rule VII and such additional conditions as the office deems appropriate. Before awarding a grant at a different level of funding than applied for or with conditions that materially change the project, the office shall, whenever reasonably practicable, consult with the applicant.

(6) The decision of the office on an application is final and the application may not be resubmitted. An

applicant may, however, submit an application that has been modified to address concerns expressed by the office pursuant to (4) above.
Auth: 2-89-106, MCA Imp: 2-89-105, 2-89-107, MCA

RULE VI APPLICATION REVIEW CRITERIA (1) Subject to (2) below, the office shall evaluate applications according to the following criteria (which are not assigned any priority or relative importance by their order in the following list):

(a) public benefits;
(b) equity in geographical distribution;
(c) number of citizens served;
(d) cost/benefit ratio;
(e) amount of grant applied for;
(f) variety of projects and other centennial functions already planned or funded;
(g) feasibility of project and quality of operation plan, including qualifications of key personnel;
(h) timing of project;
(i) adequacy of applicant's resources;
(j) availability and extent of substitute or supplemental funding, or both;
(k) the degree to which the project would focus statewide, national or international attention on Montana; and
(l) degree of citizen involvement.

(2) In view of the variety and diversity of projects for which grant applications are anticipated, not all review criteria may be applicable to all applications. In this situation, the office may base the awards upon all or less than all of the foregoing criteria.

(3) For each quarter, the office shall rate the applications within each grant category (transitory festival or lasting heritage) based on the criteria listed in (1) above. The office may in its discretion allocate funding between categories and may reserve all or a portion of existing funds for distribution during a future quarter. Whenever the lieutenant governor determines that special circumstances warrant action on a particular application before the office completes its ratings for the quarter, the office may take action on that application before completing its ratings.
Auth: 2-89-106, MCA Imp: 2-89-105, MCA

RULE VII GRANT PROVISIONS (1) No grant money may be transferred until the applicant and the office have signed a grant agreement prepared by the office. The grant agreement must include provisions detailing the specific terms of the grant and must contain the general provisions listed in (2) below.

(2) Each grant is subject to the following general conditions:

(a) that the grant monies will be used only for the purposes described in the grant contract and that grantee will reimburse the office for any disbursements in violation of this condition;

(b) that, upon material breach of the terms of the grant agreement, grantee shall return to office the total amount of the grant;

(c) that the grantee may not discriminate against any employer, contractor, or applicant for employment or contract on the basis of race, color, sex, religion, national origin, marital status, physical or mental handicap, or age unless the reasonable demands of the project require such a distinction;

(d) that the grantee shall indemnify and hold harmless the lieutenant governor, the office and its employees, the commission and individual members thereof, and the state of Montana for the grantee's performance of this grant agreement;

(e) that the grant agreement may not be assigned, transferred, or modified without the written consent of the office;

(f) that venue for any action related to the agreement shall be in Lewis and Clark County;

(g) that the grantee shall maintain accurate records documenting performance of and expenditures made pursuant to the agreement;

(h) that the grantee shall allow at reasonable times and places, the office, the legislative fiscal analyst, the legislative auditor, or their designees to audit all records, reports, and other documents that grantee maintains pursuant to or in complying with the agreement;

(i) that the office may inspect the premises of the grantee at all reasonable times to determine compliance with the agreement;

(j) that the grantee shall make such oral and written progress reports as are required in the agreement; and

(k) that the grantee shall take reasonable steps to notify the public that the project "was made possible by a grant from the Montana Statehood Centennial Office."

Auth: 2-89-106, MCA Imp: 2-89-105, MCA

RULE VIII PUBLIC RECORDS (1) Applications submitted to the office become public documents. The office may, however, provide for confidentiality of certain information within constitutional and statutory constraints. An applicant shall consult with the office before submitting an application containing information the applicant wishes to be kept confidential.

Auth: 2-89-106, MCA Imp: 2-89-105, MCA

4. These rules are necessary to establish a procedure for the preparation, submission, review, and decision on applications by the public for these centennial grants.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Lieutenant Governor W. Gordon McOmber, Capitol Station, Helena, Montana 59620 no later than July 22, 1988.

6. John F. North, Chief Legal Counsel, Office of the Governor, Capitol Station, Helena, Montana 59620 has been designated to preside over and conduct the hearing.

7. The authority of the Centennial Office to make the proposed rules is based on 2-89-106, MCA. The rules implement 2-89-105 and 2-89-107, MCA.

W. Gordon McOmber
Lieutenant Governor

Certified to the Secretary of State June 13, 1988

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.23.404 relating to Depreciation Rules, Corporation Taxes.	NOTICE OF PUBLIC HEARING on the PROPOSED AMENDMENT of ARM 42.23.404 relating to Depreciation Rules, Corporation Taxes.

TO: All Interested Persons:

1. On August 10, 1988, at 10:00 am, a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.23.404, relating to Depreciation Rules, Corporation Taxes.

2. The amendment as proposed provides as follows:

42.23.404 DEPRECIATION AND OBSOLESCENCE (1) Remains the same.

(2) The basis upon which depreciation is to be computed shall be the ~~adjusted basis for determining gain on a sale or other disposition as provided in ARM 42.23.212. However, no asset shall be depreciated below its reasonable salvage value. In computing the allowance for depreciation, use of the rates and methods prescribed or permitted to be used for federal income tax purposes will be considered correct in the absence of evidence that the use of such rates or methods do not result in a reasonable allowance in a particular case.~~ same basis as used for federal income tax purposes.

(3) The method of depreciation used and the amount of the depreciation must be the same as that reported for federal income tax purposes. AUTH, 15-31-501 MCA; IMP, 15-31-114 MCA.

4. The Department is proposing the amendment because the question has been raised whether any method of depreciation allowable for federal purposes can be used for Montana purposes even if that method differs from the method actually in use for federal purposes.

Section 15-31-114(2)(a) MCA states in part: All elections for depreciation shall be the same as the election made for federal income tax purposes.. . .

(2) and (3) above are necessary to make perfectly clear the same method and basis which must be used for both federal and state purposes.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than August 12, 1988.

6. Eric Fehlig, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/13/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.26.263 relating to Section 631, A, B, C Gains.	NOTICE OF PROPOSED AMENDMENT of ARM 42.26.263 relating to Section 631, A, B, C Gains.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 3, 1988, the Department of Revenue proposes to amend ARM 42.26.263 relating to Section 631 A, B, C Gains.

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

42.26.263 SPECIAL COMPUTATIONS RELATED TO SALES FACTOR (1) through (2) remain the same.

(3) Section 631 of the Internal Revenue Code (gains) which are attributable to internal transactions must be eliminated from the sales factor. The ultimate sale to outsiders will be included in line 1 sales. Section 631(A) log sales and section 631(B) gains should be included in the factor at the gross sales price used to calculate the gain. Section 631(C) gains should be included to the extent of gross royalties received prior to the capital gains offset and prior to the netting of long term capital gains and losses. AUTH, 15-1-201, 15-31-313 and 15-31-501 MCA; IMP, 15-1-601 and 15-31-310 MCA.

3. ARM 42.26.263 is proposed to be amended because Section 631(A), (B) and (C) of the Internal Revenue Code creates the potential for distortion to the sales factor for multistate taxpayers engaged in the coal, iron ore and forest product industries. This distortion occurs because the taxpayer can elect to treat an internal transaction as a sale in order to receive capital gains treatment. The sales factor is designed to reflect sales only to outsiders and therefore the "internal sale" resulting from Section 631 must be eliminated.

The proposed rule eliminates from the sales factor the amount resulting from purely internal transactions. This treatment puts the taxpayers who elect Section 631 on the same basis as all taxpayers in that the sales factor only reflects external transactions.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

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

no later than July 21, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 21, 1988.

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

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/13/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through V relating to Trucking Regulations, Corporation License Tax.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I through V relating to Trucking Regulations, Corporation License Tax.

TO: All Interested Persons:

1. On July 18, 1988, at 10:00 am, a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I through V, relating to Trucking Regulations.

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

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

RULE I SPECIAL RULES FOR TRUCKING COMPANIES DEFINITIONS

(1) The following definitions are applicable to the numerator and the denominator of the property factor, as well as other apportionment factor descriptions:

(a) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income year, but the department of revenue may require the averaging of monthly values during the income year or such averaging as is necessary to reflect properly the average value of the trucking company's property. (See ARM 42.26.237).

(b) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(c) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(d) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustment, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (See ARM 42.26.235).

(e) "Property used during the course of the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(f) "Trucking company" means a motor carrier, a motor contract carrier or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation.

(g) The "value of owned" real and tangible personal property means its original cost. (See ARM 42.26.235).

(h) The "value of rented" real and tangible personal property means the product of eight (8) times the net annual rental rate. (See ARM 42.26.236). AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 MCA.

RULE II PROPERTY FACTOR (1) The denominator of the property factor shall be the average value of all the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this regulation, shall be included in the numerator of the property factor in accordance with ARM sections 42.26.231 through 42.26.237 inclusive. Mobile property, as defined in this regulation, which is located solely within this state during the income year shall be included in the numerator of the property factor. Mobile property, as defined in this regulation, which is located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-306 and 15-31-307 MCA.

RULE III PAYROLL FACTOR (1) The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business income. (See 42.26.243 ARM). The numerator of the payroll factor is the total compensation paid in this state during the income year by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees shall be included in the numerator as provided in ARM 42.26.244.

(2) With respect to personnel performing services within and without this state, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-308 and 15-31-309 MCA.

RULE IV SALES (REVENUE FACTOR) (1) In general, all revenues derived from transactions and activities in the regular course of the taxpayer's trade or business which produces business income shall be included in the denominator of the revenue factor (See ARM 42.26.253).

(2) The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state

in accordance with ARM 42.26.255.

(3) Numerator of the sales (revenue) factor from freight, mail, and express. The total revenue of the taxpayer attributable to this state during this income year from hauling freight, mail, and express shall be:

(a) Intrastate - all receipts from any shipment which both originates and terminates within this state; and

(b) Interstate - that portion of the receipts from movements or shipments passing through, into or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-310 and 15-31-311 MCA.

RULE V DE MINIMUS NEXUS STANDARD (1) Notwithstanding any provision contained herein, these regulations shall not apply to require the apportionment of income to this state if the trucking company during the course of the income year neither:

(a) Owns nor rents any real or personal property in this state, except mobile property; nor

(b) Makes any pick-ups or deliveries within this state; nor

(c) Travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income year does not exceed three percent of the total mobile property miles traveled in all states by the trucking company during that period; nor

(d) Makes more than twelve trips into this state.

AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 MCA.

4. The Department is proposing rules I through V because from a state taxation viewpoint, the trucking industry has been recognized as being a unique type of business. Currently the department has regulations on the books that relate to the trucking industry. These regulations are fairly brief and do not provide sufficient guidance to either the taxpayer or the department.

The proposed regulations were developed by the Uniformity Committee of the Multistate Tax Commission. These regulations are not significantly different than those that exist except that they provide more guidance to the taxpayer and to the department.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than July 21, 1988.

6. Eric Fehlig, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/13/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I relating to Coal Severance Tax Rates.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rule I relating to Coal Severance Tax Rates.

TO: All Interested Persons:

1. On August 9, 1988, at 10:30 am, a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rule I, relating to Coal Severance Tax Rates.

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

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

RULE I APPLICABLE TAX RATES (1) Beginning July 1, 1988 the coal severance tax rate will begin an incremental decline to 15%. According to the following schedule:

TAX RATES

Coal Production	Under 7000 BTU	7000 BTU & Over
July 1, 1975-June 30, 1988	20%	30%
July 1, 1988-June 30, 1990	17%	25%
July 1, 1990-June 30, 1991	13%	20%
July 1, 1991-forward	13%	15%

All revenue associated with production in each time frame will be subject to the tax rate in effect when the coal was produced. Revenue received by coal producers for cost escalations, billing adjustments, disputed payments, etc. will not necessarily be taxed at the rate in effect when the payment is received. The applicable tax rate will be the rate in effect when the coal was produced regardless when the final payment was received. AUTH, 15-35-122 MCA; IMP, 15-35-103 MCA.

4. This rule is needed to clarify the applicability of the new tax rate schedule and to emphasize that the tax accrues when the coal is produced and is not dependent on when payment is received.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than August 12, 1988.

6. Paul Van Tricht, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/13/88.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

IN THE MATTER OF THE THE ADOPTION OF RULES CONCERNING SPECIAL EDUCATION CONTROVERSIES	)))))))	NOTICE OF AMENDMENT OF ARM 10.6.101, 10.6.103, 10.6.104, 10.6.106, 10.6.108, 10.6.119 through 10.6.122 and 10.6.127 and ADOPTION OF RULE I - 10.6.103A, RULE II - 10.6.103B and RULE III - 10.6.119A CONCERNING SPECIAL EDUCATION CONTROVERSIES

TO: All Interested Persons.

1. On December 24, 1987, the Office of Public Instruction published notice of the proposed amendment to rules relating to special education controversies at page 2331 of the 1987 Montana Administrative Register, issue number 24.

2. The office has amended these rules as proposed with the exception of 10.6.101(1)(c), ARM, regarding postsecondary vocational-technical centers or postsecondary vocational-technical education. This paragraph will not be changed.

3. A public hearing was held on February 1, 1988, to consider the proposed amendments of these rules. The Office of Public Instruction was represented by Rick Bartos, Assistant Superintendent/Legal Services.

Also present at the hearing were Linda Brandon, Paralegal, Legal Services, Office of Public Instruction; and Elaine Colie, Director, North Central Learning Resource Center, 3115 Fifth Avenue North, Great Falls, Montana.

4. The Office of Public Instruction has considered the comments received:

COMMENT

Elaine Colie and Dennis Maasjo, Superintendent of Turner School District, Turner, Montana, contended special education cases should be retained by the County Superintendent of schools as the de novo hearing officer who conducts special education cases.

RESPONSE

No changes made.

The United States Department of Education has indicated that the County Superintendent and the State Superintendent of Schools cannot sit as special education hearing examiners for issues that arise out of the Education for All Handicapped Children's Act, 20 U.S.C. 1415, et seq. The State of Montana would not be in compliance with federal law if the county superintendent or State Superintendent would be permitted to hear these cases.

COMMENT

Elaine Colie raised a concern regarding the provision that allows the board of trustees up to and including ten (10) calendar days in which to address special education controversies in a school district and reach a final decision. She indicated that would unnecessarily prolong the process.

RESPONSE

No changes made.

Federal law requires the Office of Public Instruction to render a decision within forty-five (45) days after the receipt of an appeal on a special education matter. The Office of Public Instruction has incorporated an opportunity by rule for the board of trustees to consider the matter within ten (10) days after they receive notice from the office that an appeal has been made. The 10 days do not extend the 45-day time limit but are incorporated within the 45 days in which a decision is to be rendered.

COMMENT

Emilie Loring, an attorney for the Montana Education Association, objected to the State Superintendent's proposal to delete references to postsecondary vocational-technical centers, or postsecondary vocational-technical education as part of the rules of school controversy process.

RESPONSE

The Office of Public Instruction will delete the proposed amendment with regard to postsecondary vocational-technical centers, or postsecondary vocational-technical education. ARM 10.6.101(1)(c) will not be changed.

A review of House Bill 39 of the 50th Montana Legislature, indicates that the effective date regarding the transition of vocational-technical centers from the authority and supervision of the State Superintendent to the Board of Regents is July 1, 1987. However, House Bill 39 indicates that during the period from July 1, 1987 to July 1, 1989, rights of persons employed by vocational-

technical centers under a collective bargaining contract may not be impaired, and they may, at any time prior to July 1, 1989, exercise any right they have under a collective bargaining agreement to transfer to another position within the school district. The legislation regarding due process for teachers in vocational-technical centers is unclear.

There appears to be no recourse for teachers at vocational-technical centers to appeal a school controversy if this administrative rule was deleted.

The Office of Public Instruction will maintain the rule and allow teachers in postsecondary vocational-technical centers the opportunity to appeal a school controversy contested case to the county superintendent and State Superintendent of Public Instruction.

The Office of Public Instruction will propose an amendment to the Rules of School Controvery at a later time.

Ed Argenbright
State Superintendent
Office of Public Instruction

Certified to the Secretary of State, June 13, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.7.306, 11.7.617 and 11.16.139 pertaining to requests for fair hearings	))))	NOTICE OF AMENDMENT OF RULES 11.7.306, 11.7.617 AND 11.16.139 PERTAINING TO REQUESTS FOR FAIR HEARINGS.

TO: All Interested Persons

1. On May 12, 1988, the Department of Family Services published notice of the proposed amendment of Rules 11.7.306, 11.7.617 and 11.16.139 which pertain to requests for fair hearings at page 854 of the 1988 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 11.7.306, 11.7.617 and 11.16.139 as proposed.

3. No written testimony or comments were received.

Director, Department of Family Services

Certified to the Secretary of State June 13, 1988.

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

In the matter of the amendment of Rules 46.12.502, 46.12.2001, 46.12.2002, 46.12.2003 and 46.12.2013 and repeal of Rules 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007 and 46.12.2008 pertaining to reimbursement for physician services	)	NOTICE OF THE AMENDMENT OF RULES 46.12.502, 46.12.2001, 46.12.2002, 46.12.2003 AND 46.12.2013 AND REPEAL OF RULES 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007 AND 46.12.2008 PERTAINING TO REIMBURSEMENT FOR PHYSICIAN SERVICES

TO: All Interested Persons

1. On April 28, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment and repeal of rules as listed above pertaining to reimbursement for physician services at page 814 of the 1988 Administrative Register, issue number 8.

2. The Department has amended Rules 46.12.502, 46.12.2001, 46.12.2002 and 46.12.2013 as proposed.

3. The Department has amended the following rule as proposed with the following change:

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) The department ~~will--pay the--lower-of--the--following-for--physician-services-not-also covered-by-medicare:~~ hereby adopts and incorporates by reference the procedure code report (PCR) as amended through ~~May-18,~~ JUNE 10, 1988. The PCR is published by the Montana department of social and rehabilitation services and lists medicaid-payable physician procedure codes and descriptions as delineated in the CPT4 and/or the Health Care Financing Administration's common procedure coding system (HCPCS), fees assigned to relevant procedures and effective dates of fees assigned. A copy of the PCR may be obtained from the Economic Assistance Division, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604.

Subsections (1)(a) through (4) remain as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-113 and 53-6-141 MCA

4. The Department has repealed ARM 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007 and 46.12.2008 as proposed.

5. The Department has amended ARM 46.12.2003(1) as set forth in paragraph numbered 3 above by the incorporation of the Procedure Code Report (PCR), as amended through June 10, 1988 rather than May 18, 1988 as originally proposed. As a

result of this change, some procedure fees have been increased from the amount originally proposed while other procedure fees will be increased but not as high as that which was originally proposed. The specific changes are set forth below. The following procedure codes will be increased effective July 1, 1988:

Procedure	Current Fee	Fee Proposed Under Rule Notice	Fee Proposed Under Final Rule Notice
J0760	$ 2.10	$ 2.10	$ 4.70
J0770	14.60	14.60	16.90
J0830	10.60	10.60	13.20
J0970	5.90	5.90	9.70
J1040	6.80	6.80	9.90
J1405	14.90	14.90	23.60
J1630	2.70	2.70	5.30
J1730	37.00	37.00	40.70
J1780	28.50	28.50	31.10
J1890	3.20	3.20	8.00
J2690	1.70	1.70	15.40

Procedure	Current Fee	Fee Proposed Under Rule Notice	Fee Proposed Under Final Rule Notice
J3370	$ 3.00	$ 3.00	$ 20.70
J9010	138.30	138.30	210.50
J9040	139.70	139.70	153.90
J9120	5.60	5.60	7.90
J9170	1.40	1.40	12.40
J9200	59.10	59.10	64.40
J9270	42.20	42.20	51.00
J9340	19.00	19.00	26.90
J9360	33.60	33.60	36.00
J9370	27.00	27.00	34.80
J9380	121.40	121.40	156.40
90701	15.96	15.96	17.03
90707	19.14	23.00	27.23
90733	10.91	10.91	13.75
90737	11.09	14.00	15.75

The following procedure code increases (effective July 1, 1988) have been reduced to allow for increases to the above immunization/injectible procedure codes:

Procedure	Current Fee	Fee Proposed Under Rule Notice	Fee Proposed Under Final Rule Notice
59400	$619.00	$675.33	$662.21
59410	384.00	418.94	410.80
59420	17.50	19.09	18.72
59430	25.00	27.28	26.75
59501	696.45	759.83	745.07
59521	696.45	759.83	745.07
59540	541.68	590.97	579.49
59541	773.82	844.24	827.83
59560	541.68	590.97	579.49
59561	773.82	844.24	827.83
59581	773.82	844.24	827.83

6. The fee increase for immunization procedure 90731 in the Procedure Code Report (PCR) will be increased from $16.64 to $41.33 per injection effective July 1, 1988 and applied retroactively from June 1, 1988.

7. The Department has thoroughly considered all commentary received:

COMMENT: An increase to the fee for immunization procedure 90731 is needed to reimburse local providers at amounts at least equal to the costs of obtaining the immunization supplies. This increase should be made retroactive to June 1, 1987 due to a recent exposure of Hepatitis B among Medicaid clients.

RESPONSE: Information obtained from the Department of Health and Human Services states that the cost of obtaining the immunization supplies is $41.33 per injection. A retroactive effective date is necessary to meet the urgency of the immunization need, so the fee change in the Procedure Code Report (PCR) for procedure 90731 will be applied retroactively from June 1, 1988. This change is expected to cost Medicaid $1,000 or less per fiscal year.

COMMENT: Provider groups that frequently bill immunization and/or injectible drug procedures have commented that Medicaid assigned fees for these codes are less than the costs to providers for obtaining immunization and injectible supplies necessary to perform the respective procedures.

RESPONSE: Information on the costs of immunizations and injectibles was obtained from Medicare and from the Department of Health and Human Services. If costs exceeded Medicaid fees by $2.00 or more per procedure, then these respective fees were increased to match costs. Amounts previously allocated

for obstetrical care were proportionally reduced to account for the fee increases for immunization and injectible procedures. The costs of immunization/injectible increases offset by reduction in obstetrical increases are estimated at $29,520. The fee increases for obstetrical care were reduced to compensate for immunization/injectible increases because the obstetrical fee increases had accounted for 64% of the FY 89 budget allocated for physician fee increases. Obstetrical fee increases now represent 52.5% of the allocated FY 89 budget for physician fee increases.

8. These rule changes will be effective July 1, 1988.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 10, 1988.

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

In the matter of the amendment of Rules 46.12.555, 46.12.556 and 46.12.557 pertaining to personal care services	))))	NOTICE OF THE AMENDMENT OF RULES 46.12.555, 46.12.556 AND 46.12.557 PERTAINING TO PERSONAL CARE SERVICES

TO: All Interested Persons

1. On May 12, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.555, 46.12.556 and 46.12.557 pertaining to personal care services at page 872 of the 1988 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.12.555 as proposed.

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

46.12.556 PERSONAL CARE SERVICES, REQUIREMENTS

Subsection (1) remains the same.

(2) Personal care services are ~~only~~ available only to ~~persons~~ recipients who reside at home. ~~or in a licensed foster home or a licensed group home. Persons residing in licensed foster or group homes must have personal care services prior authorized by the department.~~

~~(3) Personal care services will not be provided when services are or could be funded through either the adult or children's foster care program or the developmental disabilities program. The department may, within its discretion, authorize exceptions to this rule. All exceptions must be prior authorized by the department.~~

(3) PERSONAL CARE SERVICES MAY BE PROVIDED ONLY IN THE RECIPIENT'S HOME. AN ATTENDANT MAY ACCOMPANY A RECIPIENT TO RECEIVE MEDICAL CARE OR SHOP FOR ITEMS ESSENTIAL TO THE RECIPIENT'S HEALTH AND MAINTENANCE.

(4) PERSONAL CARE SERVICES PROVIDED IN LICENSED FOSTER OR GROUP HOMES MUST BE PRIOR AUTHORIZED BY THE DEPARTMENT. PERSONAL CARE SERVICES MAY BE AUTHORIZED WHEN THE PERSON'S MEDICAL NEEDS ARE BEYOND THE SCOPE OF SERVICES NORMALLY PROVIDED BY PROGRAMS FUNDING SERVICES IN FOSTER OR GROUP HOME SETTINGS. FOR EXAMPLE, A PERSON REQUIRING ADDITIONAL ASSISTANCE BECAUSE OF AN ACUTE MEDICAL EPISODE OR POST-HOSPITALIZATION PERIOD MAY RECEIVE PERSONAL CARE SERVICES IN A FOSTER OR GROUP HOME SETTING.

Subsections (4) through (5)(a) remain as proposed but will be renumbered (5) through (6)(a).

(I) THE CONDITION REQUIRES ROUTINE SUPPORTIVE ASSISTANCE IN THE HOME TO PREVENT A HEALTH OR SAFETY CRISIS FROM DEVELOPING;

(~~i~~II) the condition is not expected to exhibit sudden deterioration;

(~~ii~~III) the condition does not require frequent medical or nursing judgement to determine changes in the recipient's plan of care; and

(~~iii~~IV) the condition ~~is-such-that-a-physically-disabled-or-elderly-recipient~~ does not ~~need~~ REQUIRE constant skilled professional care. ~~but--does---require--routine--supportive-assistance--in--the-home-to-prevent-a-health-or--safety-crisis-from-developing;~~

(b) The recipient must be capable of making choices about activities of daily living, understanding the impact of these choices and assuming responsibility for the choices, or have someone residing within or outside the household willing to ASSIST THE RECIPIENT IN DECISION MAKING AND TO direct their activities.

(c) Recipients who have unstable medical conditions characterized by episodic events, rapid deterioration, frequent professional intervention or modification in the plan of care, or need for skilled treatment or rehabilitation activities~~,--are~~ MAY not BE appropriate for personal care and should be referred for home health, nursing, rehabilitation or other long-term care services.

Subsections (6) through (11)(h) remain as proposed but will be renumbered (7) through (12)(h).

(i) the recipient refuses the services of ~~the~~ A personal care attendant based solely or partly on the attendant's race, creed, religion, sex, marital status, color, age, handicap or national origin.

Subsections (12) through (15) remain as proposed but will be renumbered (13) through (16).

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.557 PERSONAL CARE SERVICE, REIMBURSEMENT

Subsection (1) remains as proposed.

(a) ~~Short-term~~ ADDITIONAL assistance is required FOR A SHORT TERM as the result of an acute medical episode.

(b) ~~Short-term~~ ADDITIONAL assistance is required FOR A SHORT TERM to prevent institutionalization during the absence of the normal caregiver.

(c) ~~More--intensive--service~~ ADDITIONAL ASSISTANCE is required during a post-hospitalization period.

(d) ~~All~~ THERE ARE NO FEASIBLE alternative arrangements for meeting the recipient's ~~medical~~ ADDITIONAL PERSONAL CARE needs. ~~have-been-explored-and-are-not-feasible-including,-but~~

~~not limited to,~~ OTHER ALTERNATIVES TO BE CONSIDERED INCLUDE provision of personal care services in combination with other formal services or in combination with contributions of informal caregivers.

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

(~~i~~A) A unit of attendant service is one hour and means an on-site visit specific to a recipient.

(~~ii~~B) A unit of ~~nursing~~ nurse supervision service is one hour and means an on-site recipient visit ~~plus~~ and related activity specific to that recipient.

(~~iii~~C) A unit of overtime service is one hour and means services provided by an attendant in excess of 40 hours per week.

(~~iv~~D) ~~A unit of t~~Travel time is ~~one hour and means~~ time spent in travel by an attendant as part of his principal activity, such as travel time between recipient home visits. Travel time does not include time from the attendant's home to the first recipient or from the last recipient home visit back to the attendant's home.

Subsections (4) and (5) remain as proposed.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and Sec. 53-6-141 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: What "items specifically required for the recipient's health and maintenance" are included in the escort provision?

RESPONSE: The language as proposed in the rule is identical to the language in the Federal Medical Assistance manual. Essential items include but are not limited to groceries, clothing and other personal items.

COMMENT: The limitation of the provision of personal care service to the home should be more explicitly stated.

RESPONSE: Section 46.12.556(2) has been rewritten to specify that personal care services must be provided in the recipient's home.

COMMENT: The rules should include criteria for determining when services would be authorized for persons residing in licensed foster or group homes.

RESPONSE: Section 46.12.556(3), concerning authorization of personal care services in licensed foster and group homes, has

been rewritten and an example of when services would be authorized for foster or group home residents is included.

COMMENT: A clearer definition of "constant" should be included in Section 46.12.556(4)(iii).

RESPONSE: The Department prefers to maintain flexibility in determining when the condition is met.

COMMENT: Clarification is needed as to who outside the recipient's household can help direct the recipient's activities.

RESPONSE: The Department does not want to restrict those who can assist the recipient to persons living only within the state.

COMMENT: Section 46.12.556(5)(c) implies that recipients with medically unstable conditions may not receive personal care in combination with care from another source.

RESPONSE: This section does not exclude an unstable recipient from receiving personal care in combination with other long term care services.

COMMENT: Services should not be terminated due to recipient discrimination against an attendant.

RESPONSE: The personal care contract agency is required by contract to assign attendants that meet recipient needs. If the attendant is unable to meet the recipient's needs or is unacceptable to the recipient, the contract agency would assign another attendant. Assignment of attendants may not be based on race, creed, religion, sex, marital status, color, age, handicap or national origins. Services would be terminated if the recipient refuses services based on the attendant's race, creed, religion, sex, marital status, color, age, handicap or national origin.

COMMENT: No exceptions should be granted to the hourly limit on services.

RESPONSE: The Department desires to have the discretion to provide services in excess of the hourly limit for persons of exceptional need under circumstances where that need can reasonably be met.

COMMENT: There should be more specific criteria used for approval of exceptions to the hourly limit on services.

RESPONSE: The rule has been revised to eliminate the more subjective criteria.

COMMENT: Attendant mileage for escorting recipients should be paid.

RESPONSE: The Medicaid program can only reimburse mileage when the transportation is for the recipient to receive medicaid compensable services. The only exception to this federal requirement is when the person is enrolled in the Home and Community Services Program where social transportation is covered. Reimbursement is available for the attendant's travel time when escorting recipients.

COMMENT: Should the unit of travel time be one hour.

RESPONSE: The rule has been revised to delete the reference to one hour. The Department will develop an appropriate unit.

COMMENT: Personal care services should be available for activities outside the home.

RESPONSE: Federal interpretation mandates that personal care services must be provided only in the recipient's home with the exception noted above for medically essential activities.

COMMENT: Personal care services should be available to persons residing in children and adult foster homes when the primary caretaker is incapacitated due to health problems.

RESPONSE: The rule has been revised to include this as an example of when personal care services to foster or group home residents would be authorized.

5. These rule changes will be effective July 1, 1988.

Gail Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 16, 1988.

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

In the matter of amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1206, 46.12.1207 and 46.12.1210 pertaining to nursing home reimbursement	)))))	NOTICE OF THE AMENDMENT OF RULES 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1207 AND 46.12.1210 PERTAINING TO NURSING HOME REIMBURSEMENT

TO: All Interested Persons

1. On April 28, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1206 and 46.12.1207 pertaining to nursing home reimbursement at page 803 of the 1988 Montana Administrative Register, issue number 8.

2. The Department has amended Rules 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1206, 46.12.107 and 46.12.1210 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: ARM 46.12.1202(2)(h) should be amended in its last sentence to indicate ". . . because there was no fiscal year 1988 survey performed," because the 1987 survey was conducted in March 1987.

RESPONSE: The last sentence of ARM 46.12.1202(2)(h) specifies that facilities new to the program in FY 1989 will be required to use the 3.157, provider's average nursing care time, as they were not in the program when the 1987 surveys were performed. There will be no fiscal year 1988 surveys used in rate setting, so it is appropriate to use the 3.157 average nursing care time which was derived from the fiscal year 1987 survey period information.

COMMENT: The $1.23 increase proposed in ARM 46.12.1204(2)(a) is inadequate to most cost increases resulting from inflation, increased patient needs or increased governmental regulatory requirements; (b) was not arrived at systematically but is apparently the result of inadequate legislative appropriation divided by projected patient days.

RESPONSE: The $1.23 increase in the reimbursement rates of providers is in keeping with the legislative intent to increase long term care providers' rates. The current rule provides for 2% increases in statewide average rates for both FY 88 and FY 89 which is projected to be adequate to reimburse reasonable and necessary costs. This rate increase to all providers recognize the potential increases in operating costs

for providers participating in the medicaid program including inflation, increased patient needs and increased government regulations. With this increase, all providers are treated equally as all providers' rates will increase $1.23 over the fiscal year 1988 level of reimbursement. This increase corresponds to the projected 1988 and 1989 increases in resident contributions such as increases in Social Security retirement benefits.

COMMENT: The new construction property payment rate in ARM 46.12.1204(2) is inadequate and should be changed to yield at least $10 per patient day for new construction.

RESPONSE: The property rate for new facilities built after June 30, 1985 is $7.60. This rate has been indexed forward so that the new construction rate for fiscal years 1988 and 1989 is $8.14. It is difficult to equate a value for new construction reimbursement without further analysis of costs as was previously done when computing the $7.60 which is currently used in the reimbursement formula for new construction. If the Department decides to rebase provider costs, the new construction property payment rate will be analyzed and may require adjustment based on this rebasing process.

COMMENT: Some providers object to the across the board increase of $1.23. Last year some facility rates were dropped due to their facility's patient assessment score going down. This year their assessment score is up again and they have no way of recovering for this increase in patient assessment.

RESPONSE: It is true that any provider with an increase in their patient assessment score may have received an increase in rate under the rule currently in effect; however, all statewide averages would have been recomputed and it is impossible in the absence of the recomputations to determine how the rates would have been distributed among providers. The reimbursement formula has no allowance or hold harmless provision for not lowering a facility's rate from one year to the next. The proposed rule that provides all facilities with a $1.23 increase allows all providers an increase in 1989 with no provider taking a decrease over their 1988 rates. This across the board increase is evenly distributed to each provider in the same amount.

COMMENT: The $1.23 increase is insufficient in reimbursing providers who have made efforts to provide higher quality of care and documentation in their facility in expectation that their rate would increase as a result of their efforts to increase their patient assessment scores.

RESPONSE: The long term care facility will only be required to staff to a level for fiscal year 1989 based upon fiscal year 1987 patient assessment. The 1989 rates will be set using patient assessment data from FY 1987. This rule will freeze any change in rate factors and will provide a $1.23 increase to cover any increases in operating costs. The Department will expect facilities to continue to provide high quality of care and continue to document patient care they are providing.

COMMENT: Current time frames for the hearings officer and director to render decisions is adequate. Extending that time limit to 90 days seems unduly burdensome. This would allow for a six month delay from the end of a hearing until the director renders his or her decision. This extension will assure a lengthy time frame between the hearing and the appeal conclusion. Ninety days is unreasonable when compared to the 15 days in which providers are required to respond to departmental actions.

RESPONSE: It is true that providers must respond within 15 days of Department action regarding written findings, recommendations or rate changes. Within 15 days a provider may also request an extension of up to 30 days for submission of objections and justifications. The Department may also grant further extension for good cause shown.

Fair hearing requests must be received no later than the 30th calendar day following the date of receipt of the Department's written administrative review determination. The allowance of 90 calendar days will in no way mean that a decision will not be made as promptly as possible but allows a longer but definite time frame before a decision is to be made. This 90 day timeline will allow the Department director and hearings officer, who are reviewing the facts and law for the first time, a more reasonable time period to carefully analyze the facts of law of each case in order to prepare an appropriate decision.

COMMENT: I must object to any rule that has patient assessment connected with it. A small nursing home with 36 beds cannot adjust staffing to any great extent. For a nursing home of this size, patient assessment serves as no useful management tool.

RESPONSE: Patient assessment or a provider's average nursing care time as defined in the administrative rules is the sum of management hours of care expressed in nursing aide hours for Medicaid recipients in a specific facility as identified by the Department in its most recent patient assessment survey, divided by the number of Medicaid recipients in the facility.

Therefore, the patient assessment score is a sum of the hours required by the Medicaid patients in the facility to meet their specific care needs for the survey period. It is not a method for adjusting staffing. Unless a facility's patients are static and unchanging from month to month, the patient abstract will allow a facility to determine how many minutes of care is needed by the Medicaid patients in their facility and the staff necessary to provide for their care needs.

Patient assessment scores can vary greatly in an individual facility from month to month, especially in smaller facilities. The Department requires facilities to meet only minimum staffing requirements and does not mandate staffing changes unless the facility's patient mix changes or care needs change.

4. These rule changes are proposed to be effective July 1, 1988.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 10, 1988.

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

In the matter of the amendment of Rules 46.12.1401 through 46.12.1405, 46.12.1408 through 46.12.1411, 46.12.1413, 46.12.1425, 46.12.1428 through 46.12.1430, 46.12.1433, 46.12.1435 through 46.12.1439, 46.12.1441, 46.12.1442, 46.12.1444, 46.12.1445, 46.12.1447, 46.12.1448, 46.12.1450 through 46.12.1455, 46.12.1462, 46.12.1475, 46.12.1480 and 46.12.1481 pertaining to the Home and Community Services Program	)	NOTICE OF AMENDMENT OF RULES 46.12.1401 THROUGH 46.12.1405, 46.12.1408 THROUGH 46.12.1411, 46.12.1413, 46.12.1425, 46.12.1428 THROUGH 46.12.1430, 46.12.1433, 46.12.1435 THROUGH 46.12.1439, 46.12.1441, 46.12.1442, 46.12.1444, 46.12.1445, 46.12.1447, 46.12.1448, 46.12.1450 THROUGH 46.12.1455, 46.12.1462, 46.12.1475, 46.12.1480 AND 46.12.1481 PERTAINING TO THE HOME AND COMMUNITY SERVICES PROGRAM

TO: All Interested Persons

1. On May 12, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules as listed above pertaining to the Home and Community Services Program at page 856 of the 1988 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.1401, 46.12.1403, 46.12.1404, 46.12.1408, 46.12.1409, 46.12.1410, 46.12.1413, 46.12.1425, 46.12.1429, 46.12.1430, 46.12.1433, 46.12.1435, 46.12.1436, 46.12.1437, 46.12.1438, 46.12.1439, 46.12.1441, 46.12.1442, 46.12.1444, 46.12.1445, 46.12.1447, 46.12.1448, 46.12.1450, 46.12.1451, 46.12.1452, 46.12.1453, 46.12.1454, 46.12.1455, 46.12.1462, 46.12.1480 and 46.12.1481 as proposed.

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

46.12.1402 LIMITING ENROLLMENT ON BASIS OF AVAILABLE FUNDS (1) Enrollment in the home and community services program is limited based on federal restrictions and state appropriations. ~~Enrollment will be on a first-come-first-served basis for elderly and physically disabled persons. For physically disabled persons and developmentally disabled persons, priority for enrollment will be given to those persons determined by the department or its designee to be most in need of services.~~

~~(2) When all slots are filled, a waiting list will be established to select those persons determined by the depart-~~

~~ment-or-its-designee-to-be-most-in-need-of-services.--Priority for--placement-will-be-established--according-to-the-following criteria:~~

(2) THE DEPARTMENT WILL DETERMINE ELIGIBILITY OF APPLICANTS FOR HOME AND COMMUNITY SERVICES BASED ON THESE RULES.

(3) PRIORITY FOR RECEIPT OF SERVICES WILL BE ESTABLISHED ACCORDING TO THE FOLLOWING CRITERIA:

(A) THE PERSON'S NEED FOR SERVICES;

(~~a~~B) the ~~amount~~ AVAILABILITY of other community services ~~available~~ to meet the person's needs;

(~~b~~C) the ability of the case management team to provide services that meet the person's health and safety needs; and

(~~c~~D) the person's risk of institutionalization or death.

Subsections (3) through (4)(e) remain as proposed but will be recategorized as (4) through (5)(e).

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1405 GENERAL REQUIREMENTS Subsections (1) through (9) remain as proposed.

~~(10)--Home-and--community-services--will-not-be--provided when-services-are-or--could-be-funded-through-either-the-adult or--children's--foster-care-program--or-the-developmental-disabilities-program.--The-department-may,-within-its-discretion, authorize--exceptions--to--this--rule.--All-exceptions-must-be prior-authorized-by-the-department.~~

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1411 COST OF PLAN OF CARE AS REASON FOR DENYING SERVICES (1) Home and community services ~~will-be-denied to-a-person-when-the-cost-to-the-medicaid--program-of-the-person's-services,~~ are limited to persons whose home and community service costs, as determined in accordance with subsection (1)(a) of this rule, ~~is-projected-to--exceed-the--cost of~~ are no more than what medicaid would pay for the person's ~~institutional~~ care, as determined in accordance with subsection (1)(b) AND (C) of this rule. The department may, within its discretion, authorize exceptions to this limit. Any services exceeding this limit must be prior authorized by the department. ~~This~~ Cost determinations will be made ~~by the department~~ before ~~the~~ implementation of the proposed plan of care has been approved by the department.

Subsections (1)(a) through (1)(b)(ii) remain as proposed.

(c) For persons in need of intensive institutional care, the ~~maximum plan of care~~ HOME AND COMMUNITY SERVICE costS shall not exceed ~~80% of~~ what the ~~cost of service to~~ medicaid payment for that person would have been in an inpatient hospital or rehabilitation setting. Home and community services for persons in need ~~in~~ of intensive institutional care must ~~receive~~ be prior ~~authorization from~~ authorized by the department.

Subsection (1)(d) remains the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1428 PERSONAL CARE ~~ATTENDANT~~ SERVICES, DEFINITIONS

Subsections (1) through (1)(b) remain as proposed.

(c) Personal care services ~~shall~~ WILL not include the specialized services outlined in ARM subsections 46.12.555 (4)(a) through (f).

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1475 RESPIRATORY THERAPY SERVICES, REQUIREMENTS

Subsections (1) and (2) remain the same.

(3) Respiratory therapy services ~~are~~ must be furnished in the person's home and be limited to ~~recipients~~ persons who, WITHOUT RESPIRATORY CARE AT HOME, would ~~be institutionalized~~ require care as an inpatient in a hospital, SNF or ICF ~~without respiratory care~~.

(4) Respiratory therapy services may be provided only to persons who have adequate support services to be cared for at home. ~~and who wish to be cared for at home.~~

Subsection (4) remains the same in text but will be renumbered as subsection (5).

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

4. The Department has thoroughly considered all commentary received:

COMMENT: A commenter expressed concern about serving persons at home when the attending physician has prescribed hospitalization. The rule should specify criteria to assure the health and safety of recipients.

RESPONSE: The Department feels adequate controls exist to assure the recipient's health and safety in the home. The Department requires the recipient's attending physician to approve and sign the recipient's plan of care. By signing the plan of care, the physician is stating that the recipient's health and safety needs can be assured by the provision of home and community services. The case management team, in conjunction with the attending physician, can terminate services if the recipient's health and safety needs can no longer be met.

6. These rule changes will be effective July 1, 1988.

Carl Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 16, 1988.

VOLUME NO. 42 OPINION NO. 87

CONTRACTS - County authority to grant franchises;
COUNTIES - Authority to grant franchises;
COUNTY GOVERNMENT - Authority to grant franchises;
INTERGOVERNMENTAL COOPERATION - City-county interlocal franchise agreements;
MONTANA CODE ANNOTATED - Title 7, chapter 3, part 4; Title 7, chapter 5, part 21; sections 7-1-2102, 7-1-2103, 7-3-111, 7-3-144(1)(c), 7-3-402, 7-4-2611(2)(h), 7-5-2129, 7-11-103, 7-11-104;
UNITED STATES CODE - 47 U.S.C. §§ 521, 522(9).

HELD: The County of Missoula has the power to grant a television franchise and such franchise may be the subject of an interlocal agreement between the City of Missoula and the County of Missoula.

1 June 1988

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have asked my opinion on an issue which I have phrased as follows:

> Does Missoula County have the authority to grant a cable television franchise, and if so, may the County of Missoula and the City of Missoula enter into an interlocal agreement regarding that franchise?

In 1984, Congress passed the Federal Cable Communications Policy Act, P.L. 98-549, 47 U.S.C. § 521, which granted franchise authority to "any governmental entity empowered by Federal, State, or local law to grant a franchise." 47 U.S.C. § 522(9). This broad delegation of authority brings the focus to the first issue of this request: whether Missoula County is empowered by state law to grant a cable television franchise.

Missoula County has an elected county official form of government. Section 7-3-111, MCA, states that certain

provisions of Title 7, chapter 3, part 4, concerning commission government, govern such a county. One of the sections listed in section 7-3-111, MCA--section 7-3-402, MCA--explains that a county like Missoula County is vested with general government powers. General government powers are granted by specific statutory provision and include powers which are necessarily implied from those expressed. § 7-1-2101, MCA. The county's powers are to be liberally construed. Mont. Const. Art. XI, § 4. Included among the general government powers is the power of the county to enter contracts "as may be necessary to the exercise of its powers." Section 7-1-2103, MCA.

While section 7-1-2103, MCA, does not specifically grant Missoula County's commission form of government authority to grant franchises, other statutes by implication assume that the county may exercise that authority if it so chooses. This conclusion is supported by language in several statutes. First, in Title 7, chapter 5, part 21, entitled "Conduct of County Government":

> The board of county commissioners must cause to be kept:
>
> ....
>
> (3) a "Franchise Book" containing all franchises granted by them, for what purpose, the length of time and to whom granted, and the amount of bond and license tax required.

§ 7-5-2129, MCA.

Next, in section 7-4-2611(2)(h), MCA, the county clerk is charged to

> preserve and file all petitions and applications for franchises and record the action of the board [of county commissioners] thereon[.] [Emphasis added.]

Finally, when a county merger is contemplated, the consolidation plan must include a provision

> for the transfer or other disposition of property and other rights, claims, assets and

> franchises of local governments consolidated under the alternative plan[.] [Emphasis added.]

§ 7-3-144(1)(c), MCA.

When taken in light of the above-listed statutes, Montana's constitutional provision requiring that counties' powers be liberally construed, and case law stating that any doubt concerning such powers be resolved in favor of granting the authority, Tipco Corp., Inc. v. City of Billings, 39 St. Rptr. 600, 642 P.2d 1074 (1982), it is apparent that Missoula County, as a commission form of government, has by implication been given the authority to grant franchises.

The second issue in this request is whether the City of Missoula and the County of Missoula may enter into an interlocal agreement regarding a cable television franchise. Section 7-11-104, MCA, provides that public agencies (a term including cities and counties, § 7-11-103, MCA) may contract "to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform." Assuming the City of Missoula is so authorized, and noting the above discussion as to the County of Missoula's authority, an interlocal agreement pertaining to a cable television franchise is possible. Actual feasibility, of course, requires adherence to the pertinent statutes and depends upon factors unavailable at this writing. Hence, this opinion may only be interpreted as stating such an agreement is possible and is subject to the applicable statutory requirements.

THEREFORE, IT IS MY OPINION:

> The County of Missoula has the power to grant a television franchise and such franchise may be the subject of an interlocal agreement between the City of Missoula and the County of Missoula.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 88

ATTORNEYS - Counsel acting at direction of retaining parents to exclusion of client youth's wishes;
ATTORNEYS - Parental refusal to hire counsel for indigent youth;
JUVENILES - Counsel acting at direction of retaining parents to exclusion of client youth's wishes;
JUVENILES - Parental refusal to hire counsel for indigent youth;
YOUTH COURT ACT - Counsel acting at direction of retaining parents to exclusion of client youth's wishes;
YOUTH COURT ACT - Parental refusal to hire counsel for indigent youth;
MONTANA CODE ANNOTATED - Sections 40-6-211, 41-5-501, 41-5-511, 41-5-523.

HELD: When a petition is filed initiating proceedings under the Youth Court Act, a youth is entitled to court-appointed counsel when the youth is indigent and the youth's parents have sufficient financial resources but refuse to employ counsel. A youth court may order reimbursement from nonindigent parents for expenses associated with such court-appointed counsel.

9 June 1988

Claude I. Burlingame
Sanders County Attorney
Sanders County Courthouse
Thompson Falls MT 59873

Dear Mr. Burlingame:

You have requested my opinion on the following questions:

1. When a petition is filed initiating proceedings under the Youth Court Act, is the youth entitled to court-appointed counsel when the youth is indigent and the youth's parents have sufficient

financial resources but refuse to employ counsel?

2. When an attorney retained to represent an indigent youth following the filing of a petition under the Youth Court Act follows the exclusive direction of the retaining parents to the exclusion of the youth's wishes, is the youth entitled to court-appointed counsel?

There are several Montana statutory provisions which address your questions. Section 41-5-511, MCA, concerns the right of a youth to counsel in youth court proceedings:

> In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication. [Emphasis added.]

This provision thus makes clear that a youth must be represented by counsel where commitment to the Department of Family Services for more than six months may occur and that, in all other instances, the right to counsel may be waived only with the consent of both the youth and his parents. Consequently, when a youth desires counsel but is unable to pay for legal representation, an attorney must be appointed irrespective of his parents' wishes. See generally In re Gault, 387 U.S. 1, 36, 41 (1967).

The issue of whether counsel must be appointed, however, is distinct from the question of whether the county or the youth's parents are obligated to pay for such counsel's services.

Section 40-6-211, MCA, obligates parents to provide necessary support to their children. Counsel fees incurred on behalf of a minor child have been held to be necessaries for which the parents are liable. In Re H., 468 P.2d 204 (Cal. 1970) and cases cited therein. Section 41-5-523(1)(i), MCA, allows a youth court at the time of disposition of a delinquent youth or youth in need of supervision to order the parents to furnish such services as the court may designate. Under these statutory provisions, a youth court may order reimbursement for expenses associated with court-appointed counsel if the nonindigent parents refused to retain counsel following the filing of a petition under section 41-5-501, MCA.

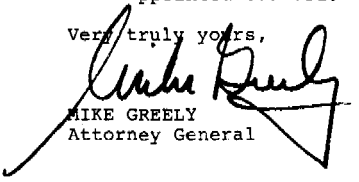
I determine that your second question is inappropriate for issuance of an Attorney General's Opinion. Counsel representing youths are obligated under Rules 1.7(b), 1.8(f), and 5.4(c) of the Rules of Professional Conduct to maintain the integrity of their attorney-client relationships with such youths. They must, therefore, recognize at all times that the youths and not the parents are their clients, even if the latter are responsible for the fees associated with the representation. I must assume attorneys are aware of their ethical responsibilities and will faithfully discharge those responsibilities. Should an attorney become conflicted, however, the Youth Court possesses clear authority to take whatever remedial measures are necessary to ensure that a youth receives appropriate representation. The nature of such remedial measures, which could extend to appointment of new counsel at the parents' expense, must be determined on a case-by-case basis through exercise of the Youth Court's sound discretion.

THEREFORE, IT IS MY OPINION:

> When a petition is filed initiating proceedings under the Youth Court Act, a youth is entitled to court-appointed counsel when the youth is indigent and the youth's parents have sufficient financial resources but refuse to employ counsel. A youth

court may order reimbursement from nonindigent parents for expenses associated with such court-appointed counsel.

Very truly yours,



MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1988. This table includes those rules adopted during the period March 31, 1988 through June 30, 1988 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1988, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1987 or 1988 Montana Administrative Register.

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