RESERVE



# MONTANA ADMINISTRATIVE REGISTER



1989 ISSUE NO. 13
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INDEX COPY

MONTANA ADMINISTRATIVE REGISTER OF MONTANA

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

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| In the matter of the adoption of an amendment relating to the designation of noxious weeds | ) ) ) ) ) | NOTICE OF AN AMENDMENT TO ARM 4.5.203 RELATING TO THE DESIGNATION OF NOXIOUS WEEDS |

TO: All Interested Persons

1. On May 25, 1989 the Montana Department of Agriculture published notice of hearing on the above stated rule at page 628 of the Montana Administrative Register, issue number 10.

2. The department has adopted the amended rule as proposed.

3. The department received one letter of comment from the United States Department of Interior, BLM office, Billings, Montana. They objected to the amendment because of the threat that tansy ragwort presents to livestock and feed, and because of its ability to establish itself in forest, range and cultivated land and because of its ability to out compete beneficial plants.

The department's response is that its decision to delete tansy ragwort from the state noxious weed list is based on survey information indicating that the plant is not currently wide-spread in Idaho and is not a serious threat to Montana as was originally determined. Any plant newly introduced to the state can be controlled, if necessary, through the emergency section of the Montana Noxious Weed Trust Fund Act (80-7-814 (3) (c) and 815, MCA). Many exotic plant species may threaten the state but are not necessarily included on the state noxious weed list. The department will monitor these potential weed threats, including tansy ragwort, and implement emergency management plans when necessary.

DEPARTMENT OF AGRICULTURE

E.M. Snortland

E.M. Snortland
Director
Department of Agriculture

Certified to the Secretary of State June 29, 1989

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

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| In the matter of the adoption of a Rule classifying certain types of actions as categorical exclusions | NOTICE OF THE ADOPTION OF ARM 18.2.261 CLASSIFYING CERTAIN TYPES OF ACTIONS AS CATEGORICAL EXCLUSIONS |

TO: All Interested Persons:

1. On May 11, 1989, the Department of Highways published notice of a proposed adoption of a rule concerning classification of certain types of actions as categorical exclusions at page 508 of the 1989 Montana Administrative Register, issue number 9.

2. The agency has adopted the rule as proposed.

3. No one requested a public hearing on the rule and only one comment was received. The attorney for the Administrative Code Committee questioned the citations of authority given in the notice in paragraph 7 and recommended that the Department cite sections 75-10-103(2) and 75-1-201(1)(b)(ii), MCA, instead. His recommendation has been adopted and the citations will be changed for the history note.

Larry W. Larsen, P.E.
Director of Highways

By: Larry W. Larsen

Certified to the Secretary of State June 30, 1989.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

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| In the matter of the amendment of ARM 1.2.217 regarding Authority Extensions in Rule History Notes. | ) ) ) | NOTICE OF AMENDMENT OF ARM 1.2.217 - AUTHORITY EXTENSIONS |

TO: All Interested Persons.

1. On May 25, 1989, the office of the Secretary of State published a notice of proposed amendment of the rule regarding the deletion of Authority Extensions in Register material and rule history notes in the Administrative Rules of Montana at page 652 of the Montana Administrative Register, Issue No. 10.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received.

MIKE COONEY
Secretary of State

Dated this 30th day of June, 1989

VOLUME NO. 43 OPINION NO. 21

SCHOOL BOARDS - Elimination of debt in district's debt service fund; inclusion of anticipated delinquencies of tax payments in school district budget;
SCHOOL DISTRICTS - Duties of county superintendent in preparing school district budget; elimination of debt in district's debt service fund; inclusion of anticipated delinquencies of tax payments in school district budget;
MONTANA CODE ANNOTATED - Sections 7-6-2345, 20-9-114, 20-9-121, 20-9-123, 20-9-131 to 20-9-134, 20-9-161 to 20-9-167, 20-9-212, 20-9-213, 20-9-438, 20-9-439, 20-9-440.

HELD: 1. A deficit in the school district's debt service fund should be eliminated through the budget and tax levy for the ensuing fiscal year.

2. The limited cash reserve in the debt service fund is made up of a portion of the cash balance of the fund at the end of the fiscal year. The trustees are not required to include a limited cash reserve in the debt service fund.

3. The county superintendent may only increase the preliminary budget amount in the debt service fund to the amount of obligations for bonds and special improvement district assessments contained in the county treasurer's statement pursuant to section 20-9-121, MCA.

4. Anticipated delinquencies in tax payments may be included in the computations in preparing the school district's debt service fund in the preliminary budget and setting the levy for the ensuing fiscal year.

June 22, 1989

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested an opinion on several questions concerning the school district's debt service fund which I have phrased as follows:

1. When the debt service fund of the school district contains a deficit from the previous fiscal year, should the deficit be included in the budget for the ensuing fiscal year?

2. Pursuant to section 20-9-438(2), MCA, are the trustees of a school district required to include in the debt service fund's preliminary budget an amount for a limited cash reserve?

3. If the answer to question number 2 is yes, may the county superintendent determine the amount of the limited cash reserve in the event the trustees fail to do so?

4. May the county superintendent increase the preliminary budget amount in the debt service fund above the amount reported by the county treasurer in his statement detailing the obligations for bond retirement and interest as required by section 20-9-121, MCA?

5. May anticipated delinquencies in tax payments in the ensuing fiscal year be included in the school district's budget and levy?

Your questions concern financing of the debt service fund of the Manhattan school district. For the 1988-89 school fiscal year the Manhattan school board included in the preliminary budget for the debt service fund an amount representing the principal and interest on its bonds which will become due during the 1988-89 fiscal year. A limited cash reserve for the debt service fund was not included. Because of tax delinquencies there will not be sufficient money in the debt service fund to pay the bond obligations that will become due during the fiscal year. In addition, the cash balance at the end of fiscal year 1987-88 was already deficient because of tax delinquencies during that fiscal year. Money for these obligations was taken from surpluses in other funds. Thus, registered warrants were not issued against the debt service fund.

The debt service fund is established in each school district to provide payment of special improvement district assessments and bonded indebtedness incurred by the district. § 20-9-438(1), (2), MCA. It is funded primarily by the school district levy. § 20-9-439, MCA. Each year the district is required to budget for the debt service fund an amount of money necessary to pay the assessments and bond obligations that will become due during that fiscal year. §§ 20-9-438(1), (2), MCA. In addition, the fund may include a "limited cash reserve" that constitutes a portion of the cash balance left in the fund from the prior fiscal year. § 20-9-438(2)(b), (3), MCA. The purpose of this cash reserve is to provide for payment of obligations that become due in the four-month period between the beginning of the fiscal year and the time in which the taxes are collected. See hearings before the Senate and House Committees for Education and Cultural Resources, House Bill 18, January 28, 1987; March 4, 1987.

The Manhattan school district has been unable to include a "limited cash reserve" in its debt service fund because the large amounts of delinquencies in the previous years have eliminated any fund surplus. In fact, the fund is presently suffering a deficit of $50,000.

Your first question is whether the school district's budget for the debt service fund should include the fund's deficit as well as the amounts needed to pay the obligations becoming due in the next fiscal year. I conclude the deficit should be included in the budget and the levy for the ensuing fiscal year.

The statutes governing school district financing require a debt service fund to be established for each district and used to pay obligations on bonds and special improvement district assessments. § 20-9-440, MCA. Each year the district is required to budget enough money for the fund to pay those obligations. § 20-9-438, MCA. The clear import of the statutory provisions is that the bond and special improvement district obligations be paid exclusively from the debt service fund. The Legislature has provided mechanisms to accommodate periodic shortfalls when the debt service fund obligations become due. The district is authorized to include in the fund a limited cash reserve, which is designed to enable the district to make payments on obligations that become due during the four-month period from the beginning of the fiscal year until the actual receipt to tax revenues. §§ 20-9-438(2)(b), (3), MCA. Also, the district is authorized to prepare an emergency budget, which entails the district's adopting an

emergency resolution and obtaining approval for the emergency budget by the superintendent of public instruction. The levy to cover the emergency budget would be imposed in the next school fiscal year. See §§ 20-9-161 to 167, MCA.

The Manhattan school district borrowed money from other district funds to pay the bond obligations. The debt service fund consequently incurred a deficit for the borrowed amount.

I conclude that all moneys used to pay the obligations on the bonds and special improvement district assessments must be paid out of the debt service fund. The money to pay the bond obligations was borrowed from other funds and repaid, thus creating the deficit in the debt service fund. Since the fund is financed by a tax levy, the deficits in the fund must be corrected by the levy. Therefore, the budget and tax levy for the next fiscal year should reflect the amount of the deficit in the debt service fund.

It should be mentioned that section 20-9-212(9), MCA, authorizes the county treasurer to register warrants only when there is insufficient money available in all the funds of the school district. Warrants drawn on insufficient funds must be registered. § 7-6-2345, MCA. Thus, when the school district adopts an emergency budget, moneys must be borrowed from other funds to pay the emergency expenses before warrants to pay the emergency expenses out of the depleted debt service fund can be registered.

Your next question is whether the trustees are required to include in the debt service fund of the preliminary budget an amount for a limited cash reserve. Section 20-9-438(3), MCA, provides in pertinent part:

> At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year cash balance of the debt service fund to be earmarked as a limited cash reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations which must be paid from July 1 through November 30 of the school fiscal year[.]

This language is clear and unambiguous, and needs no further construction. See Dunphy v. Anaconda, 151 Mont. 76, 438 P.2d 660, 662 (1968). The limited cash reserve can be made up only of a debt service fund surplus at

the end of the fiscal year. Thus, if there is no cash surplus, there can be no limited cash reserve for the next fiscal year. Even if there is a cash surplus in the debt service fund, the trustees are not required to designate a portion for limited cash reserve. The statute is not mandatory.

Your next question is whether the county superintendent of schools may increase the preliminary budget amount in the debt service fund above the amount reported by the county treasurer in his statement detailing the obligations for bonds as required in section 20-9-121, MCA. That section requires the county treasurer to prepare a statement by July 10 describing for each fund the cash on hand and outstanding obligations as of the close of the last completed school fiscal year. The treasurer is also required to include a statement of the bond obligations that will become due in the next fiscal year.

Section 20-9-438(4), MCA, provides:

> The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent shall be the final budget expenditure amount for the debt service fund of such school district. [Emphasis added.]

This section authorizes the county superintendent to increase the budgeted amount only if the amount in the preliminary budget is less than the amount of obligations payable as stated by the county treasurer. There is no statutory authority for the county superintendent to increase the amount in the budget above the amount reported by the county treasurer. The function of preparing and adopting the budget rests primarily with the board of trustees; the roles of the county superintendent and the county commissioners are limited. The trustees prepare and adopt the preliminary

and final budgets. §§ 20-9-131 to 133, MCA. In preparation for the tax levy the county superintendent prepares estimates of revenues available to finance each fund. § 20-9-123, MCA. After the adoption of the final budget by the trustees the county superintendent completes the final budget forms, computes the levy requirements for the school district's funds, and places the final adopted budget before the county commissioners who will fix and impose the tax levy. §§ 20-9-134, 20-9-141, 20-9-142, MCA. Thus, the county superintendent has no discretionary function in preparing the school district's budget. (The one exception is when the trustees refuse to prepare the budget; then the county superintendent does so. § 20-9-114, MCA.) The fact that the trustees maintain exclusive authority to prepare and adopt the district's budget comports with the requirement that only the trustees have authority to expend moneys of the school district. § 20-9-213, MCA. I thus conclude that the county superintendent may not increase the preliminary budget above the amount contained in the county treasurer's statement of bond obligations and special improvement district assessments due in the ensuing fiscal year.

Your final two questions concern the ability of the school district to prepare its budget and tax levy to include anticipated delinquencies in tax payments during the ensuing fiscal year. I conclude that the budget of the debt service fund and subsequent levy may reflect anticipated delinquencies. Section 20-9-438, MCA, which contains the procedure for preparation of the debt service fund, provides in part:

> (1) The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with 20-9-113 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of such bonds and the redemption plans of the trustees. [Emphasis added.]

I believe that in calculating the amount of money necessary to pay these obligations, the trustees must consider anticipated delinquencies; otherwise the amount budgeted will be insufficient to cover the obligations. Delinquencies almost always occur and they can be estimated on the basis of previous years. Clearly this subsection contemplated that the debt service fund

contain enough money to pay the obligations as they become due. To ignore the realities of tax delinquencies would thus defeat the intent of this legislation. Tax legislation must be construed in a practical manner. In re Kohr's Estate, 122 Mont. 145, 199 P.2d 856, 871 (1948).

THEREFORE, IT IS MY OPINION:

1. A deficit in the school district's debt service fund should be eliminated through the budget and tax levy for the ensuing fiscal year.

2. The limited cash reserve in the debt service fund is made up of a portion of the cash balance of the fund at the end of the fiscal year. The trustees are not required to include a limited cash reserve in the debt service fund.

3. The county superintendent may only increase the preliminary budget amount in the debt service fund to the amount of obligations for bonds and special improvement district assessments contained in the county treasurer's statement pursuant to section 20-9-121, MCA.

4. Anticipated delinquencies in tax payments may be included in the computations in preparing the school district's debt service fund in the preliminary budget and setting the levy for the ensuing fiscal year.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 22

CITIES AND TOWNS - Extraterritorial zoning authority;
COUNTIES - Extraterritorial zoning authority of municipalities;
LAND USE - Extraterritorial zoning authority of municipalities;
MUNICIPAL CORPORATIONS - Extraterritorial zoning authority;
MONTANA CODE ANNOTATED - Sections 7-1-4111, 76-1-601 to 76-1-606, 76-2-310, 76-2-311.

HELD: In the absence of applicable county zoning regulations, section 76-2-310, MCA, authorizes a city of the first class which has adopted a master plan to extend its zoning regulations extraterritorially within a three-mile radius of its corporate limits without reference to county boundary lines.

June 27, 1989

David Hull
Helena City Attorney
City-County Administration Building
315 North Park
Helena MT 59623

Dear Mr. Hull:

You have requested my opinion concerning the following question:

> Does section 76-2-310, MCA, authorize a city of the first class to extend its zoning regulations not more than three miles beyond its corporate limits even if such extension includes territory within a county different from that where the city is located?

I conclude that, in the absence of county zoning regulations applicable to the territory within the proposed extension, the grant of extraterritorial authority to cities under section 76-2-310, MCA, is unaffected by county boundary lines.

The city of Helena is a city of the first class as defined in section 7-1-4111(1), MCA. Its corporate limits lie wholly within Lewis and Clark County but are within three miles of Jefferson County. Your opinion request was prompted by the city's possible use of its extraterritorial zoning authority under section 76-2-310, MCA, to regulate property that extends into Jefferson County. Section 76-2-310, MCA, states in relevant part:

> (1) The local city or town council or other legislative body which has adopted a master plan pursuant to [§§ 76-1-601 to 606, MCA] may extend the application of its zoning or subdivision regulations, or both, beyond its limits in any direction but not in a county which has adopted such regulations within the contemplated area.
>
> (2)(a) A city of the first class as defined in 7-1-4111 may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits, a city of the second class may not so extend more than 2 miles beyond its limits, and a city or town of the third class may not so extend more than 1 mile beyond its limits.

See also § 76-2-311(1), MCA (where municipal extraterritorial zoning power exercised, a city may enforce its zoning regulations "until the county board adopts a master plan pursuant to [§§ 76-1-601 to 606, MCA] and accompanying zoning or subdivision resolutions, or both, which include the area"); Little v. Board of County Commissioners, 38 St. Rptr. 1124, 1127, 631 P.2d 1282, 1285 (1981) (adoption of county zoning regulations precludes city from using extraterritorial power).

The city of Helena has adopted a master plan in accordance with sections 76-1-601 to 606, MCA, and neither Lewis and Clark County nor Jefferson County had zoning regulations in the area where the city proposed to zone extraterritorially at the time your request was submitted. Jefferson County has subsequently adopted zoning regulations for the area in that county, but I have nonetheless determined to issue an opinion since the question presented may arise in the future.

It is settled that a municipality's zoning power is restricted to its corporate limits unless extraterritorial application is constitutionally or statutorily permitted. 1A C. Antieau, Municipal Corporation Law § 7.58 (1987). The purpose underlying a

grant of extraterritorial zoning authority "is to enable cities to plan for the orderly development of their adjacent fringe areas." 8 McQuillin Municipal Corporations § 25.85 (3d ed. 1983) (footnote omitted); see, e.g., Village of Lake Bluff v. Jacobson, 118 Ill. App. 3d 102, 73 Ill. Dec. 637, 454 N.E.2d 734, 739 (1983) ("[t]he most reasonable reading of the statute [authorizing municipalities to apply development plan regulations within their corporate limits and contiguous territory not more than one and one-half miles beyond such limits] seems to be that the statute gives municipalities the right to exercise their police power over extraterritorial developments in the same way that they exercise that power over developments within their territory, in recognition that a municipality's concerns do not end at its borders"). This purpose presumably conforms with the grant of extraterritorial powers under section 76-2-310, MCA, since the degree of such authority directly relates to city population and contains implicit legislative recognition that larger cities will typically have broader fringe areas of population which affect municipal interests.

In construing statutory provisions, "the intention of the legislature controls" and that intention "must first be determined from the plain meaning of the words used." Missoula County v. American Asphalt, Inc., 216 Mont. 423, 426, 701 P.2d 990, 992 (1985). If the involved provision is unambiguous, neither a court nor I may "insert what has been omitted or omit what has been inserted." Reese v. Reese, 196 Mont. 101, 104, 637 P.2d 1183, 1185 (1981); accord Chennault v. Sager, 187 Mont. 455, 461-62, 610 P.2d 173, 176 (1980) ("[t]he role of a court in construing a statute is simply to ascertain and declare its substance and not insert what has been omitted"). Unless clearly required by the language used, moreover, statutes "may not be interpreted to defeat their object or purpose, and the object sought to be achieved by the legislature is of prime consideration in interpreting them." Montana Talc Company v. Cyprus Mines Corporation, 44 St. Rptr. 2161, 2166-67, 748 P.2d 444, 449 (1987); accord Johnson v. Marias River Electric Cooperative, Inc., 211 Mont. 518, 524, 687 P.2d 668, 671 (1984) ("[a]ll statutory construction by courts is an attempt to search out the will of the legislature"). These general rules of statutory construction, when applied to the unambiguous terms of section 76-2-310, MCA, and its manifest purpose, compel the conclusion that the extraterritorial zoning authority accorded cities may be used as to any lands within the statutory limits where no county zoning regulations have been implemented.

First, the thrust of section 76-2-310(1) and (2)(a), MCA, is quite clear: In the absence of county zoning regulation in the contemplated area, a city with a master plan may exert extraterritorial zoning authority within prescribed limits. This extraterritorial power is not restricted by this statute to the county in which the city is located. To imply a prohibition against extension of such power beyond the county in which a city is located would thus engraft onto the statute a limitation incompatible with its otherwise straightforward language. A literal construction of section 76-2-310, MCA, also does not conflict with any other statutory provision.

Second, even were section 76-2-310, MCA, less than clear, limiting a city's extraterritorial zoning authority to its county would undercut the very purpose of that authority. Urban development and the attendant consequences do not respect county lines, and there exists no reason to impute to the Legislature an intent to circumscribe a municipality's ability to respond to those consequences simply because of an intervening county boundary.

THEREFORE, IT IS MY OPINION:

> In the absence of applicable county zoning regulations, section 76-2-310, MCA, authorizes a city of the first class which has adopted a master plan to extend its zoning regulations extraterritorially within a three-mile radius of its corporate limits without reference to county boundary lines.

Sincerely,

Marc J. Racicot

MARC RACICOT
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, 1989. This table includes those rules adopted during the period April 1, 1989 through June 30, 1989 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, 1989, 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 1989 Montana Administrative Register.

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