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**MONTANA
ADMINISTRATIVE
REGISTER**

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1989 ISSUE NO. 4
FEBRUARY 23, 1989
PAGES 311-341



FEB 24 1983

The Montana Administrative Register (MAR), of the Montana State 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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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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BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PROPOSED AMENDMENT OF RULE
amendment of Policy) 10.65.201, POLICY STATEMENT ON
Statement On Kindergar-) KINDERGARTEN ACCREDITATION AND
ten Accreditation And) SCHEDULE VARIANCES
Schedule Variances)

NO PUBLIC HEARING IS CONTEMPLATED

TO: All Interested Persons

1. On May 4, 1989, the Board of Public Education proposes to amend rule 10.65.201, Policy Statement on Kindergarten Accreditation and Schedule Variances.

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

10.65.201 POLICY STATEMENT ON KINDERGARTEN ACCREDITATION AND SCHEDULE VARIANCES (1) in accordance with section 20-1-301 and 20-1-302, MCA; school districts are expected to operate kindergarten programs for 180 days with a minimum of two-hour daily classes; however, A school district that operates a kindergarten program in accordance with sections 20-1-301 and 20-7-117, MCA, shall provide 180 days of pupil instruction with a minimum of two hour daily classes. However, a variance to this schedule may be granted by the superintendent of public instruction in accordance with the board of public education policy. School districts applying for a first time program, reinstating a program, or requesting a schedule variance, must submit an application to the office of public instruction, which shall include a curriculum guide and a philosophy statement that shows that the kindergarten program will promote emotional, social, physical and developmental preparation for the first grade in that district and is a sequential part of the K-12 program.

(2) and (3) remain the same.

AUTH: 20-2-121, MCA

IMP: 20-2-302, MCA

3. The board is proposing this amendment to clarify the language of this rule and remove any apparent conflict with the law.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Alan Nicholson, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than March 23, 1989.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Alan Nicholson, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than March 23, 1989.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 55 as there are 546 school districts.

In the matter of the) NOTICE OF PUBLIC HEARING ON PROPOSED
amendment of Endorse-) AMENDMENT OF ARM 10.57.301, ENDORSE-
ment Information and) MENT INFORMATION AND ARM 10.57.402,
Class 2 Standard) CLASS 2 STANDARD TEACHING CERTIFICA-
Teaching Certification) TION

TO: All Interested Persons

1. On March 16, 1989, at 1:00 p.m., or as soon thereafter as it may be heard, a public hearing will be held in Room 303, Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.57.301, Endorsement Information, and ARM 10.57.402, Class 2 Standard Teaching Certification.

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

10.57.301 ENDORSEMENT INFORMATION (1) and (2) remain the same.

(3) Appropriate teaching areas acceptable for certificate endorsement include: social science, history, economics, sociology, geography, political science, economics-sociology, dramatics, journalism, elementary education, library (K-12), speech-drama, foreign language, mathematics, science, physical science, reading (K-12), physics, chemistry, biology, earth science, agriculture, industrial arts, home economics, distributive education, trade and industry, business education, business education with shorthand, music (K-12), art (K-12), physical education and health (K-12), guidance and counseling (K-12), special education (K-12), psychology. (Effective January 1, 1991, foreign language will be a K-12 endorsement.)

(4) through (8) remain the same.

AUTH: Sec. 20-2-102 MCA

IMP: Sec. 20-4-103 and Sec. 20-4-106

3. The board is proposing this amendment to add a foreign language K-12 endorsement to ensure that foreign language can be provided at the elementary level.

10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE

(1) through (4) remain the same.

(5) Elementary endorsement: Completion of an approved elementary teacher education program of an accredited teacher training institution. ~~While there is no specific requirement as to the number of credits of professional preparation for elementary endorsement, approximately 45 quarter (30 semester) credits are generally found. Within the 45 credits, the following courses are required: human growth and development, teaching of reading and/or language arts, social studies and arithmetic, and student teaching or appropriate intern experiences.~~

(6) through (10) remain the same.

AUTH: Sec. 20-2-121(1) and Sec. 20-4-102

IMP: Sec. 20-4-102, Sec. 20-4-106 and Sec. 20-4-108

4. The board is proposing this amendment to make the rule consistent with the secondary policy and to expedite certification for applicants from out of state and maintain minimums since colleges teach all the listed subject areas in their preparation programs at the elementary level.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearings. Written data, views or arguments may also be submitted to Alan Nicholson, Chairperson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than March 23, 1989.

6. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.


ALAN NICHOLSON, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State February 13, 1989.

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

In the matter of the amendment of)
ARM 16.20.102 concerning enforce-)
ment procedures under the Water)
Quality Act)

NOTICE OF DATE CHANGE
OF PUBLIC HEARING
ON THE PROPOSED
AMENDMENT OF A RULE
(Water Quality)

To: All Interested Persons


1. On March 31, 1989, at 9:00 A.M. or as soon thereafter as the matter may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rule 16.20.102, concerning enforcement procedures under the Water Quality Act. This hearing was previously scheduled for the Board's meeting on March 10, 1989 which has been rescheduled to March 31, 1989 at the request of the Chairman of the Board.

2. The rule is amended so as to make the rule consistent with the statute that it was designed to implement (Sec. 75-5-611, MCA). The purpose of the amendment is to make Department enforcement action, in the form of a notice of violation, discretionary rather than mandatory.

3. The rule, as proposed to be amended, appears in the Montana Administrative Register, 1988 Issue No. 24, dated December 22, 1988, page 2679.

4. Interested persons may submit their data, views, or arguments concerning the proposed rule, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than March 31, 1989.

5. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.



SIDNEY PRATT, M.D.,
Interim Director

Certified to the Secretary of State February 13, 1989.

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

In the matter of the amendment of)	NOTICE OF DATE CHANGE
rules 16.8.921, 16.8.936, 16.8.937,))	OF PUBLIC HEARING
16.8.941, 16.8.1101, 16.8.1103)	FOR AMENDMENT
and 16.8.1109 concerning the)	OF RULES
permitting of new or altered)	
sources of air contamination.)	
)	(Air Quality)

To: All Interested Persons

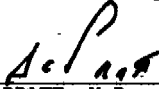
1. On March 31, at 9:30 A.M. or as soon thereafter as the matter may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules. This hearing was previously scheduled for the Board's meeting on March 10, 1989 and has been rescheduled to March 31, 1989 at the request of the Chairman of the Board.

2. The proposed amendments would update and/or correct federal incorporations by reference and clarify other terms in the captioned rules.

3. The rules, as proposed to be amended, appear in the Montana Administrative Register, 1989 Issue No. 2, dated January 26, 1989, pages 181-185.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than March 31, 1989.

5. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.



SIDNEY PRATT, M.D.
Interim Director

Certified to the Secretary of State February 13, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING on
of ARM 42.22.101, 42.22.105)	PROPOSED AMENDMENT of ARM
and 42.22.122, and ADOPTION)	42.22.101, 42.22.105 and 42.
of Rule I relating to)	22.122 and ADOPTION of Rule I
Centrally Assessed Property.)	relating to Centrally
)	Assessed Property.

TO: All Interested Persons:

1. On March 20, 1989, at 9:30 a.m., a public hearing will be held in the Scott Hart Building Auditorium, 6th and Roberts Streets, Helena, Montana, to consider the amendment of ARM 42.22.101, 42.22.105, 42.22.122 and the adoption of Rule I, relating to Centrally Assessed Property for the Property Tax Division of the Department of Revenue.

Rule I MARKET VALUE OF POLLUTION CONTROL EQUIPMENT (1)
The market value of approved class 5 pollution control equipment shall be determined by multiplying the ratio of the system market value to the system net book value times the net book value of the equipment. This value shall then be deducted from the Montana value and certified to the counties as class 5 property.

(2) This methodology shall be effective for all reporting years ending December 31, 1988, and thereafter. (AUTH, § 15-23-108, MCA, IMP, § 15-6-135, MCA.)

2. The above proposed new rule concerns property taxes paid by centrally assessed taxpayers. In particular it concerns the methodology for assessment of air and water pollution control equipment as defined in § 15-6-135, MCA (class 5 property).

3. The rules proposed to be amended also concern property taxes paid by centrally assessed taxpayers. They concern the manner and method for apportioning the centrally assessed property value of public utilities (other than railroads and airlines) which operate in Montana. The centrally assessed property must be apportioned among the counties in which the companies operate based upon a formula. The particular formula used is of major concern to any county or other taxing unit having a significant amount of centrally assessed property. It is also of major concern to all centrally assessed taxpayers. The adoption of a different formula could significantly effect the amount of taxes paid since mill levies vary between taxing jurisdictions. The current rules use the "trended" value of property in the counties to apportion among the counties. One proposal for amendment of these rules would use the original cost or "book" value to apportion among the counties. Other methods are also possible.

4. The Department has entered into a settlement agreement with various counties and the Montana Power Company which may have an impact on the adoption of Rule I and the possible amendment of the above-mentioned rules. In addition to accepting comments on proposed new Rule I, this hearing is being conducted to determine if amendments will be necessary to these existing rules and if so, accept comments and proposed language for the amendments. It is possible that amendments will not be necessary. This determination cannot be made until the hearing has been conducted and the hearing examiner has had an opportunity to review all material provided to him regarding these rules.

5. The decision of the hearing examiner is final and will determine what amendments if any will be made to the administrative rules.

6. 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 March 24, 1989.

7. Steve Brown, Attorney at Law, Helena, Montana, has been designated to preside over and conduct the hearing.



KENNETH NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State 2/13/89.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BOARD OF OPTOMETRISTS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of a rule pertaining to exam-) 36,404 EXAMINATIONS
inations)

TO: All Interested Persons:

1. On September 8, 1988, the Board of Optometrists published a notice of proposed amendment of the above-stated rule at page 1947, 1988 Montana Administrative Register, issue number 17.
2. The Board amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF OPTOMETRISTS
K.R. ZUROFF, O.D., PRESIDENT

BY: 
BRINTON B. MARKLE, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 13, 1989.

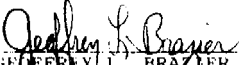
STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of a rule pertaining to licen-) 61.1201 LICENSURE REQUIRE-
sure requirements) MENTS

TO: All Interested Persons:

1. On August 25, 1988, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendment of the above-stated rule at page 1866, 1988 Montana Administrative Register, issue number 16.
2. The Board amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
PATRICK KELLY, CHAIRMAN

BY: 
JEFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 13, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8,
of a rule pertaining to hours,) 61.1601 HOURS, CREDITS AND
credits and carry over) CARRY OVER

TO: All Interested Persons:

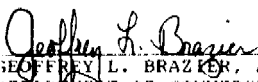
1. On November 23, 1988, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendment of the above-stated rule at page 2469, 1988 Montana Administrative Register, issue number 22.

2. The Board amended the rule exactly as proposed.

3. One comment was received from the staff of the Administrative Code Committee. It was suggested that the Board should expand on the statement of reasonable necessity for the amendment. The Board concurred. The reason is that the Board voted on a motion, made and seconded, to change the amount of carry over hours for Professional Counselors from 10 to 20 to be consistent with the current social work examiners rule regarding carry over.

4. No other comments or testimony were received.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
PATRICK KELLY, CHAIRMAN

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 13, 1989.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF THE AMENDMENT
Amendment of Rule 18.8.511A) OF RULE 18.8.511A
concerning the circumstances)
under which flag vehicles)
are required.)

TO: All Interested Persons:

1. On September 8, 1988, the Department of Highways published notice of a proposed amendment of Rule 18.8.511A concerning when flag vehicles are required at page 1962 of the 1988 Montana Administrative Register, issue number 17.

2. The agency has amended the rule with the following changes:

18.8.511A WHEN FLAG VEHICLES ARE REQUIRED (1) Flag vehicles are required ~~front-and-rear-on-primary-and-secondary-highways-and~~ at the rear of a vehicle on interstate highways if the ~~main-body-of-the-load-or-the-vehicle-or-load-exceeds-the-14~~ 16 feet in width of the ~~travel-lane-from-the-centerline-to-the-continuous-shoulder-line-or-the-edge-of-the-paved-surface,-whichever-is-the-lesser-or-if-the-overall-width-including-appurtenances-exceeds-15-feet.~~

(2) through (6) same as proposed.

3. Twelve persons submitted oral and written comments at the public hearing. Additional comments were received from the Administrative Code Committee, the Highway Patrol and three other persons who submitted written comments.

COMMENTS IN FAVOR OF THE AMENDMENT: Mike Cronin, Montana Automobile Association, spoke in support of the proposed amendment. He noted that the MAA is in favor of measures that will better provide for the safety of the traveling public and that the MAA feels the proposed amendment will serve that purpose.

Colonel R. W. Landon, Montana Highway Patrol, wrote a letter in support of the proposed amendment. Colonel Landon stated that flag vehicles are necessary safety provisions for the motoring public. He noted that many Montana highways only have 16 feet-wide traveled portions which, in addition to narrow bridges and the absence of shoulders on some highways, make it important to provide a warning of overwidth loads both at the front and rear.

COMMENTS SUGGESTING FURTHER AMENDMENTS: Lloyd Lockem, Jr., Montana Contractor's Association, spoke in favor of the proposed amendment. He noted that transporting oversize loads on Montana highways is a privilege, not a right, that the cost of flag vehicles accompanying oversize vehicles and loads is a reasonable business expense necessary to the

exercise of that privilege, and that both the current and proposed rules strike a balance that serves the needs of the public and industry. Mr. Lockem stated that having a uniform rule for all movers of oversize vehicles and loads creates a fair system for the movers and also improves the safety of the traveling public who encounter oversize loads on the highways. He believes the proposed amendment is comparable to the rules in surrounding states.

Mr. Lockem suggested that the proposed amendment should be changed in subsection (5) to require flag vehicles at the rear of vehicles or loads exceeding 110 feet on primary or secondary highway, instead of the 100 feet standard in the present rule and the proposed amendment. He noted such a change would be in conformity with the length allowed on interstate highways in subsection (6).

William Olson, Montana Contractor's Association, wrote a letter generally in support of the amendment stating that the amendment is "strict enough to insure public safety and yet hauling activities involving construction equipment/supplies are not unduly restricted." He also felt that the length limitation in subsection (5) should be changed to 110 feet.

Ray Waite, Western Transportation Crane and Rigging, Missoula, Montana wrote a letter that supported the substantive portions of the proposed amendment. His letter does request that the length restrictions in subsections (5) and (6) be increased.

RESPONSE: The Department has rejected the proposals for increased length before flag vehicles are required. The Department believes that length on two-lane highways is a greater problem than on interstates because it is more difficult for a motorist to pass. Flag vehicles serve to warn the public that an unusual load is ahead and that special care must be taken to pass it.

OTHER COMMENTS SUGGESTING FURTHER AMENDMENTS: Proposed amendments were submitted by Roger Tippy, Attorney representing the Montana Manufactured Housing and Recreational Vehicle Association. He proposed amending the rule at issue and Rule 18.8.515, ARM, regulations for the movement of a long load. His proposal would modify the present rule and the amendment under consideration by the deletion of any requirements for flag vehicles in the rear of any oversize loads; the deletion of any requirements for flag vehicles to accompany oversize loads on interstate highways; the designation by the Department of a "green route" system of highways which, by definition, would be those highways with shoulders wide enough to accommodate loads up to 16 feet wide (presumably without infringing onto the opposite travel lane); the deletion of any requirements for flag vehicles to accompany oversize loads up to 16 feet

wide on "green routes"; and flag vehicles in front of loads in excess of 16 feet wide on "green routes". The proposal retains the proposed amendment's provision for flag vehicles in front of loads exceeding 12 feet wide on non-interstate highway, unless the highway is in the "green route" system. He also proposed the deletion of the present requirement for flag vehicles to accompany loads over 100 feet long, with the exception of convoy combinations.

Mr. Tippy's proposed amendments were supported by Kathy Anderson of the same association; Bill Pierce, Pierce Homes, Billings, and president of the same association; Don Cape, Ponderosa Homes, Inc., Belgrade; Duane Burkenpas, Gallatin Equipment Company, Belgrade; William Novak, Char El Homes Corp., Billings; and Wendell Keeler, Montana Mobile Home Transport Co., Billings.

In addition to supporting the amendments, the above persons made other comments which are being consolidated since the testimony was similar. They testified that the mobile home moves are generally safe and that vehicles used to tow mobile homes are specialized pieces of equipment with highly trained and experienced drivers and many safety items not usually found on other types of moving vehicles. They asserted that the signs and flashing lights placed on mobile homes in transit, in addition to special equipment and modifications used by the tow vehicles, result in a safe system that provides a high degree of warning to motorists. Ms. Anderson stated that requiring additional flag vehicles for modular and mobile home moves will not increase the safety of the public and might cause a decrease in safety by lengthening the passing zone necessary to pass the load and tow cars.

They further stated that requiring the proposed flag vehicles will be expensive and the cost will have to be passed onto the consumers of manufactured housing, many of whom cannot afford to have it added to the only low-cost housing available to them. Mr. Pierce stated that the cost of a flag car is approximately \$1.00 per mile per car. The new requirements of the rule adopted in July, 1988, even if modified by the proposed amendment, will cost him over \$550 for a mobile home delivered to Wolf Point and over \$200 for a mobile home delivered to Roy, Montana, in addition to the costs of hauling trade-in homes back to his place of business.

Mr. Novak testified that his manufactured housing business had sales of over \$9.0 million in 1983 and it has declined to approximately \$2.0 million at the present time. He believes imposing additional costs on the industry will have severe economic impacts. He estimated it will cost the mobile home industry \$1.2 million per year to provide the additional flag cars required by the rule. If the modifications proposed by Mr. Tippy are adopted, the added cost will be \$400,000 per year.

RESPONSE: The Department has rejected the amendments proposed by the Montana Manufactured Housing and Recreational Vehicle Association. The Department is not aware of a particularly good safety record of the mobile home industry. Accident statistics show 194 accidents involving motor homes between 1979 and 1987. The number of moves is unknown although it was estimated at 1000 moves per year. The Department believes that even if the vehicles have special safety equipment to aid the drivers, the purpose of the flag vehicle is to warn the public and give them time to respond to a potentially dangerous situation since traffic lanes are not wider than 12 feet in Montana and are sometimes as narrow as 10 feet on portions of primary and secondary highways. Although wide shoulders help in allowing vehicles to pass overwidth loads, most Montana primary and secondary highways still have little or no paved shoulders and where shoulders exist, they may disappear around bridges or be used for stopping, emergency parking, bicyclists and pedestrians. The Department checked the flag vehicle regulations of Idaho, Washington, Oregon, Wyoming, North Dakota, and South Dakota as well as the recommendations of the American Association of State Highway Transportation Officials and has concluded that the proposed regulations are generally no more stringent than others. The Department recognizes that flag vehicles are an additional cost, but does not believe that mobile homes should be treated differently than other overwidth loads. The Department has, however, reconsidered its proposal in light of the testimony and has amended the rule to allow 16 foot wide loads and less to travel on interstate highways without a flag vehicle escort.

COMMENTS OPPOSING THE AMENDMENT: Thomas Kamp, Kamp Implement Co., Belgrade, and Randy Weaver, Weaver Equipment Company, Cut Bank, opposed the amendment generally. They discussed increased expenses, and Mr. Weaver asserted that a rear flag vehicle poses a safety hazard to the public.

RESPONSE: The Department believes the added expense is justified to promote the safety of the traveling public. Although flag vehicles must be passed as well, they provide warning to following as well as oncoming motorists and give them more time to adjust to a hazardous situation and decide how to deal with the overwidth load safely.

OTHER COMMENTS: The Administrative Code Committee questioned the Department's rulemaking authority. The Committee stated that implied rulemaking authority may only be used to interpret a statute.

RESPONSE: The Department recognizes that it does not have express rulemaking authority and that the rule goes beyond a mere interpretation of a statute. The Department does,

however, have the authority to impose conditions on special permits issued under sections 61-10-121 and 61-10-122, MCA. It has the authority to unilaterally determine conditions. The Department has used the rulemaking procedure in order to publicize its proposed conditions and to obtain comments and suggestions from the public. The Department believes that conditions can best be determined in a fair and equitable manner by obtaining public input.

John L. Prebil
Deputy Director of Highways

By: *John L. Prebil*

Certified to the Secretary of State February 13, 1989.

VOLUME NO. 43

OPINION NO. 3

CLERKS - Collection of appearance fee by clerk of court in URESA action;
COUNTY OFFICERS AND EMPLOYEES - Collection of appearance fee by clerk of court in URESA action;
FEES - Collection of appearance fee by clerk of court in URESA action;
MONTANA CODE ANNOTATED - Title 40, chapter 5, part 1; sections 25-1-201, 25-10-404, 40-4-124, 40-5-110, 40-5-116;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 136 (1978).

HELD: The respondent in a URESA action is required to pay a \$40 appearance fee. He or she may be excused from such payment upon filing an affidavit in accordance with section 25-10-404, MCA.

February 10, 1989

John W. Robinson
Ravalli County Attorney
Ravalli County Courthouse
Hamilton MT 59840

Dear Mr. Robinson:

You have requested my opinion on the following question:

Is the respondent in a URESA action required to pay the \$40 appearance fee?

The payment of clerical fees for civil actions is governed by section 25-1-201, MCA, and states in pertinent part:

The clerk of the district court shall collect the following fees:

....

(b) from each defendant or respondent, on his appearance, \$40[.]

The rules of statutory construction require me to interpret the statute by the clear meaning of the language. See State v. Austin, 42 St. Rptr. 1186, 704 P.2d 55, 57 (1985). This statute clearly requires a fee of every respondent or defendant in any civil action. See 37 Op. Att'y Gen. No. 136 at 577 (1978) ("[t]he

clerk of the district court must collect from each and every defendant or respondent a \$10 fee on their initial appearance").

The Uniform Reciprocal Enforcement of Support Act (1968) (URESA), Tit. 40, ch. 5, pt. 1, MCA, provides interstate and intrastate remedies for enforcement of court-ordered support of dependants. These proceedings are remedial, and civil in nature. §§ 40-5-110 (duties of support enforceable by proceeding for civil contempt), 40-4-124 ("[i]n any hearing for the civil enforcement of this part, the court is governed by the rules of evidence applicable in a civil court action in the district court") MCA; Childers v. Childers, 198 S.E.2d 485, 488 (N.C. Ct. App. 1973); Burney v. Vance, 246 N.E.2d 371, 373 (Ohio 1969).

URESA itself contemplates that the obligor (the respondent) may be required to pay clerical fees. Section 40-5-116, MCA, provides:

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee. [Emphasis added.]

It is also significant that URESA was enacted in Montana in 1969. Section 25-1-201(1)(b), MCA, was enacted long before. See 1917 Mont. Laws, ch. 88, § 1. When enacting URESA, the Legislature presumably was aware of the fee requirements in section 25-1-201, MCA. See Thiel v. Taurus Drilling Ltd, 42 St. Rptr. 1520, 710 P.2d 33, 36 (1985). Thus, if the Legislature had intended to exclude respondents in a URESA proceeding from the appearance fee requirement it would have done so.

You should be aware that even though the respondent is required to pay the appearance fee, he or she may be excused from such payment if he or she is financially

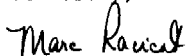
unable to pay. Section 25-10-404, MCA, provides that any person shall be excused from advance payment of court fees upon the filing of an affidavit stating that he or she has a good cause of action or defense, and is unable to pay the costs.

Lastly, I wish to stress that the individual clerk of court's procedure in obtaining appearance fees and affidavits to excuse the respondent from such fees in a URESA action should not be so complicated or time-consuming that it frustrates the URESA proceeding itself. The primary purpose of a URESA proceeding is to enforce the obligor's duty to support his or her dependants. Often the obligor is an unwilling party, is difficult to locate, and appears at the courthouse minutes before the URESA hearing is scheduled to begin. The departments within the courthouse should be encouraged to cooperatively establish a routine for parties to URESA actions to be quickly processed and made available for the court proceedings. Such cooperative effort will facilitate speedy resolutions to those actions.

THEREFORE, IT IS MY OPINION:

The respondent in a URESA action is required to pay a \$40 appearance fee. He or she may be excused from such payment upon filing an affidavit in accordance with section 25-10-404, MCA.

Sincerely,



MARC RACICOT
Attorney General

VOLUME NO. 43

OPINION NO. 4

COUNTIES - Whether special tax levies for rural fire district are for "county ... purposes" under section 61-3-509(1), MCA;

FIRE DISTRICTS - Whether rural fire district is entitled to proportional distribution of vehicle-related taxes under section 61-3-509(1), MCA;

MOTOR VEHICLES - Whether rural fire district is entitled to proportional distribution of vehicle-related taxes under section 61-3-509(1), MCA;

PROPERTY, PERSONAL - Whether rural fire district is entitled to proportional distribution of vehicle-related taxes under section 61-3-509(1), MCA;

TAXATION AND REVENUE - Whether rural fire district is entitled to proportional distribution of vehicle-related taxes under section 61-3-509(1), MCA;

MONTANA CODE ANNOTATED - Sections 7-33-2104, 7-33-2105, 7-33-2109, 15-10-401 to 15-10-412, 61-3-303, 61-3-504, 61-3-509, 61-3-521, 61-3-537;

MONTANA LAWS OF 1987 - Chapter 654;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 109 (1988), 42 Op. Att'y Gen. No. 80 (1988), 41 Op. Att'y Gen. No. 91 (1986), 41 Op. Att'y Gen. No. 26 (1985), 39 Op. Att'y Gen. No. 5 (1981).

HELD: Section 61-3-509(1), MCA, requires the vehicle-related taxes referred to therein to be distributed proportionately to rural fire districts on the basis of all mill levies applicable to personal property located within the geographical boundaries of such districts. For distribution-entitlement purposes, the residence or assignment address appearing on the certificate of registration controls.

February 13, 1989

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

Dear Mr. Salvagni:

You have requested my opinion concerning the following question:

Is a rural fire district, for which a special tax levy has been imposed under section

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7-33-2109, MCA, entitled to a "relative proportion" of those vehicle-related taxes distributed under section 61-3-509(1), MCA, and, if so, how is that proportion determined?

I conclude that section 61-3-509(1), MCA, refers to all levies applicable to personal property and imposed by a county at the request of a rural fire district. I further conclude that distributions under section 61-3-509(1), MCA, must be made with reference to the ratio of the rural fire district's mill levy to the total of all levies applicable to personal property within its geographical boundaries and that the locus of a vehicle for distribution-entitlement purposes is the residence or assignment address shown on the certificate of registration.

The Belgrade Rural Fire District has been established under section 7-33-2104(2), MCA, and operates through a board of trustees. Section 7-33-2105(3), MCA, authorizes the board to "prepare annual budgets and request special levies" under section 7-33-2109, MCA. The latter section states that, "[a]t the time of the annual levy of taxes, the board of county commissioners may levy a special tax upon all property within [the rural fire] district[]" for maintaining the district and that "[s]uch tax must be collected as are other taxes." Where a rural fire district has been created, it constitutes the relevant "taxing unit" for purposes of Initiative No. 105 and 1987 Montana Laws, chapter 654 (codified in §§ 15-10-401 to 412, MCA), and the term "property" in section 7-33-2109, MCA, includes both real and personal property. 42 Op. Att'y Gen. No. 80 (1988), 42 Op. Att'y Gen. No. 109 (1988). The board of county commissioners thus acts ministerially in levying a special tax under section 7-33-2109, MCA, which has been determined by a rural fire district's board of trustees. See 41 Op. Att'y Gen. No. 91 at 392 (1986), 39 Op. Att'y Gen. No. 5 at 22 (1981).

Section 61-3-509(1), MCA, provides for the distribution of vehicle-related taxes collected under sections 61-3-504, 61-3-521, and 61-3-537, MCA. It requires such taxes to be placed into a "motor vehicle suspense fund" and periodically to be distributed "in the relative proportions required by the levies for the state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed." Section 61-3-509(1), MCA, has been construed to mandate distribution of the involved vehicle taxes identically to personal property taxes (41 Op. Att'y Gen. No. 26 at 90 (1985)), and the section thus effectively makes the vehicle taxes a form of personal property tax. The only

logical conclusion which may be drawn from section 61-3-509(1), MCA, as interpreted in 41 Op. Att'y Gen. No. 26, is that those entities which are entitled to share in personal property taxes are also entitled to a similarly proportionate share of the vehicle taxes subject to such provision.

This conclusion is supported by the plain language of section 61-3-509(1), MCA. Although the special tax levy here was for a taxing jurisdiction other than the county itself, the services provided by a rural fire district may fairly be said to relate to "county ... purposes." Not only is a rural fire district initially established by the board of county commissioners after petition by affected residents, but it is also a principal instrument through which a county may supply rural fire protection to its residents. 42 Op. Att'y Gen. No. 109. Only an extremely narrow application of section 61-3-509(1), MCA, would support limiting the levies referred to therein to those imposed by a county on its own behalf as a taxing jurisdiction.

You have also inquired concerning how the appropriate proportion should be calculated if rural fire districts are entitled to distributions under section 61-3-509(1), MCA. That calculation requires computing the ratio of the rural fire district's mill levy to the total of those mill levies applicable to personal property in the district. Whether a particular vehicle is within a district's boundaries for distribution-entitlement purposes must be decided with reference to the residence or assignment address appearing on the certificate of registration. See § 61-3-303(1), MCA.

THEREFORE, IT IS MY OPINION:

Section 61-3-509(1), MCA, requires the vehicle-related taxes referred to therein to be distributed proportionately to rural fire districts on the basis of all mill levies applicable to personal property located within the geographical boundaries of such districts. For distribution-entitlement purposes, the residence or assignment address appearing on the certificate of registration controls.

Sincerely,



MARC RACICOT
Attorney General

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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 December 31, 1988. This table includes those rules adopted during the period January 1, 1989 through March 31, 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 December 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 1988 and 1989 Montana Administrative Registers.

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