MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 24.16.9003 and the amendment of certain prevailing wage rates that were effective December 1, 1988.	NOTICE OF PROPOSED AMENDMENT TO RULE 24.16.9003 AND CERTAIN PREVAILING WAGE RATES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 26, 1989, the Department of Labor and Industry proposes to amend ARM 24.16.9003 which provides the procedures for establishing the prevailing wage rates.

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

24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES

(1) remains the same

(2)(a)-(b) remain the same

(c) ~~Biannually,~~ Biennially, the commissioner conducts a survey of wage rates paid to workers on construction projects in one or more districts.

(d)-(e) remain the same

(3)-(4) remain the same

3. The Department also proposes to make the following changes to the prevailing wage rates for the occupations in the following districts:

(a) Electrician A, Electrician B, Electrician Foreperson, Communication Technician, District 10 - change the benefit percentage under the heading Training from 1/2% to .8%.

(b) Electrician B, District 2 - change hourly rate from $16.50 to $15.80; District 5 - change hourly rate from $14.47 to $14.59; and District 6 - change hourly rate from $15.15 to $14.10.

(c) Roofer, Roofer Foreperson, change the Health and Welfare benefits as follows:

District 3 - 92% to $1.75
District 4 - 92% to 0
District 6 - 92% to $1.75
District 7 - 92% to 0
District 8 - 92% to $1.75
District 9 - 92% to 0
District 10 - 92% to $1.75

(d) Two pages of Electrician rates for Heavy/Highway construction were inadvertantly omitted from the publication of the first set of rates and should be added. These pages may be obtained by writing to the Administrator, Employment Policy Division, ATTN: Ginny Helfert, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624 or calling

(406) 444-3555.

4. The proposed amendment to ARM 24.16.9003 is made because of a typographical error in the original rules. The commissioner shall conduct a survey once every two years, not twice a year.

The proposed change to the Training benefits for electricians and communication technicians is necessary because the previous calculation of the benefits involved a clerical error. The proposed changes to the electricians' hourly rates are necessary because the Legislative Auditor recommended such changes. The proposed changes to the roofers' Health and Welfare benefits are necessary because the original rates erroneously reflected a percentage instead of a dollar amount.

5. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Administrator, Employment Policy Division, ATTN: Ginny Helfert, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624, no later than April 28, 1989.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views or argument 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 to the Administrator, Employment Policy Division, ATTN: Ginny Helfert, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624, no later than April 28, 1989.

7. If the Department receives requests for a public hearing from 25 persons who are directly affected by the proposed amendment; from the Administrative Code Committee; from a governmental subdivision or agency; or from an association having no fewer 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.

8. The authority of the commissioner to make the proposed amendment is based on section 18-2-431, MCA, and implements sections 18-2-402, 403, and 18-2-411, MCA.

Mario A. Micone, Commissioner
Department of Labor and
Industry

Certified to the Secretary of State on March 20, 1989.

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

In the Matter of Proposed Adoption of New Rules Establishing Certain Minimum Standards for the Adequacy of Telecommunications Services and Repeal and Reenactment of ARM 38.5.2717.	NOTICE OF PUBLIC HEARING AND PROPOSED ADOPTION OF NEW RULES ESTABLISHING CERTAIN MINIMUM STANDARDS FOR THE ADEQUACY OF TELECOMMUNICATIONS SERVICES AND REPEAL AND REENACTMENT OF ARM 38.5.2717

TO: All Interested Persons

1. On May 2, 1989 at 9:00 a.m. in the Highway Department Auditorium, 2701 Prospect Avenue, Helena, Montana, a hearing will be held to consider the proposed adoption of new rules regarding Telecommunications Service.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana, except ARM 38.5.2717 which is being repealed/reenacted (with minor changes) in Rule VI. The rule to be repealed is on page 38-777 of the Administrative Rules of Montana.

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

RULE I PURPOSE (1) Section 69-3-201, MCA, requires every public utility to furnish reasonably adequate service and facilities. The purpose of these rules is to establish certain minimum standards for determining if telecommunications service is adequate. The commission will liberally construe these rules and may require additional standards when necessary to provide adequate service.

(2) These service rules apply to any carrier operating in Montana and subject to the commission's jurisdiction.

(3) If the application of any rule results in an unreasonable hardship to a carrier or a customer, either may apply for waiver under ARM 38.2.305. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE II DEFINITIONS In the interpretation of these rules, the following definitions shall be used:

(1) "Automatic dialing - announcing device." Any automatic terminal equipment which is capable of:

(a) storing numbers to be called or producing numbers to be called using a random or sequential number generator, and with the ability to call such numbers, and;

(b) delivering a prerecorded message to the number called with or without manual assistance.

(2) "Calls." Customers' telecommunications messages attempted.

(3) "Carrier." Any exchange carrier or interexchange carrier.

(4) "Central office." An independent switching unit which may provide local access lines in a telecommunications

system providing service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only. There may be more than one central office in a building.

(5) "Channel." A path for telecommunications between two or more customers or central offices.

(6) "Customer." Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity which has applied for, been accepted, and is currently receiving telecommunications service.

(7) "Customer trouble report." Any oral or written report from a customer or user of telecommunications services relating to a physical defect or to difficulty or dissatisfaction with the operation of the utility's facilities. One report shall be counted for each oral or written report received even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report.

(8) "Exchange." A service area established by an exchange carrier for the administration of telecommunications services in a specified area for which a separate local rate schedule is provided. It may consist of one or more central offices together with associated plant facilities used in furnishing telecommunications services in that area. An exchange has one point designated for the purpose of rating toll calls for all subscribers in the exchange.

(9) "Exchange carrier." A telecommunications utility that provides local exchange service.

(10) "Flat rate service." Telecommunications service furnished at a fixed monthly recurring charge.

(11) "Grade of service." The number of customers served on a telecommunications channel such as one-party, two-party, four-party, etc.

(12) "Interexchange carrier." A telecommunications carrier that carries telecommunications services between exchanges, whether inter- or intra-LATA.

(13) "Interoffice." Between central offices.

(14) "Local access line." A facility, totally within one exchange, providing a telecommunications channel between a customer's service location and the serving central office or remote switch.

(15) "Local exchange service." Telecommunications service provided within local exchange service areas in accordance with the tariffs. It includes the use of exchange facilities required to establish connections between customer locations within the exchange and between customer locations and interexchange trunks serving the exchange.

(16) "Network interface device (NID)." A device which establishes a point of demarcation between the telecommunications utility facilities and a customer's premises wiring and equipment, permits the disconnection of all customer premises wiring from the exchange carrier network, and for testing purposes, provides for direct network access through an industry registered jack of a type provided for in Part 68 of the federal communications commission (FCC) rules.

(17) "Primary service order." An application for voice grade telecommunications service to be provided at a customer location which does not have telecommunications service.

(18) "Private line." A channel provided to furnish telecommunications service between two or more customer locations, and not having connection with central office switching apparatus.

(19) "Tariff." The entire body of rates, tolls, rentals, charges, classifications and rules filed by the carrier and approved by the commission.

(20) "Telecommunications utility." Any person, firm, partnership or corporation engaged in the business of furnishing telecommunications services to the public by the authority of and under the jurisdiction of the Montana public service commission.

(21) "Traffic." Telecommunications volume, based on number of calls and duration of messages. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE III DATA TO BE FILED WITH THE COMMISSION

(1) Exchange maps. In addition to tariffs as required by 69-3-301, MCA, each exchange carrier must file with the commission a map showing the boundaries of the exchange service area for each exchange within the state. Boundary lines must be located by appropriate measurement to an identifiable location if not otherwise located on section lines, waterways, railroads, roads, etc. Maps must include location of highways, section lines, geographic township and range lines, railroads, and waterways outside municipalities and show the map scale and other detail. An exchange map and the applicable rates for local service must be available at the business office serving the exchange area. Each exchange carrier filing an original or revised map shall submit proof of notice of the proposed boundary to any other telecommunications utility adjoining the area in which a boundary line is to be established or changed.

(2) Service reports. Each carrier must furnish to the commission, at such times and in such form as the commission requires, the results of any service-related tests, summaries or records in its possession. The carrier shall also furnish the commission with any information concerning the utility's facilities or operations which may be requested.

(3) Service disruption reports. Each carrier must report promptly to the commission, and a local radio station or other local news media any specific occurrence or development which disrupts the local and/or toll service of a substantial number of its customers (the smaller of 25 percent or 100 of the exchange's local access lines) for a time period in excess of two hours. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE IV RATE AND SPECIAL CHARGES INFORMATION

(1) The exchange carrier must provide all information and assistance needed by applicants, customers, or others to

determine the lowest cost telecommunications service available from the exchange carrier that meets their stated needs. The exchange carrier must immediately provide a commission approved catalog of available services and prices in response to all service orders, at the request of customers, and as otherwise required by the commission.

(a) Prior to taking any action or offering any service, the exchange carrier must notify customers of any connection charge or other charge and must provide an estimate of the initial bill for flat monthly services and other applicable charges.

(2) The carrier must give an applicant a written estimate of special charges for services not established by an exchange carrier's tariff such as construction charges which are levied on an actual cost basis. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE V BUSINESS OFFICES (1) Each carrier must have at least one business office to provide customers and others with access to personnel who can provide information on services and rates, accept and process service applications, explain customers' bills, adjust errors, and generally represent the carrier. If one business office serves several exchanges or states, toll-free calling to that office must be provided and the office must be staffed during Montana business hours. Local exchange companies shall provide the toll-free number on bills rendered on behalf of the Rule XIV carriers, and interexchange carriers, and upon request of callers. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE VI CUSTOMER BILLING (1) Billing procedures.

(a) Typed or machine-printed bills must be issued monthly, unless there are no charges during the month.

(b) Residential and single-line business bills must itemize by tariff element the charges for all services. The bill must clearly provide the following information:

(i) payment due date;

(ii) total amount due, including taxes;

(iii) the telephone number of the company's business office serving the customer;

(iv) a statement that regulated services may not be disconnected for nonpayment of detariffed or unregulated services;

(v) a statement of which services are optional;

(vi) the address and telephone number of the commission.

(c) If an exchange carrier bills and collects for any interexchange carrier, including itself, all toll calls must be itemized showing the date, the time, the length in minutes, discounts if applicable, and the destination of the call. For collect and/or third party calls the point of origin and the telephone number of origin must be stated. The bill must state the interexchange carrier telephone number to call for resolving disputes with the interexchange carrier.

(d) A carrier must notify the commission of the name and address of all entities for which it provides billing and collection services. If an exchange carrier bills and collects for an interexchange carrier, the two carriers must establish an efficient method of resolving customer disputes. The carrier must be able to provide the customer with the name, address and telephone number of an interexchange carrier employee or department responsible for customer dispute resolution.

(e) If a customer has subscribed to local measured service, the bill must detail any and all charges in excess of the basic local measured service monthly charge, including, at a minimum, the total minutes and total charges in each rate category.

(2) Inaccurately billed service. If telecommunications service has been underbilled because of the carrier's error, omission or negligence and the amount owed exceeds $25, the carrier must offer the customer a reasonable payment arrangement. If telecommunications service has been overbilled, the carrier must credit the customer's future bills for the amounts overbilled, unless the customer requests a cash refund of the credit balance. In either case (underbilling or overbilling) the carrier shall abide by the applicable statute of limitations, and 69-3-221, MCA.

(3) Past due bill. A carrier shall not consider a customer's bill past due unless it remains unpaid for a period of 20 calendar days after the billing date printed on the bill.

(4) Service interruption. If a customer's service is interrupted for any reason other than the customer's negligence or willful act and service remains out for more than 24 hours after being reported, appropriate adjustments shall be automatically made to the customer's bill upon determination of the outage. For the purpose of administering this rule, every month is considered to have 30 days.

(5) Billing dispute. The carrier may require the customer to pay the undisputed portion of the bill to avoid discontinuance of service for nonpayment. The carrier must investigate the dispute and report the result to the customer. If the billing dispute is not resolved, the carrier must advise the customer that the commission is available for review and disposition of the matter.

(6) Billing. Telecommunications service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment of services deregulated by the Montana Telecommunications Act. A telecommunications provider's bill to its customer shall clearly indicate regulated service and distinguish between tariffed and detariffed service. Regulated and not regulated service may appear on the same bill but must be presented as separate line items.

(a) Undesignated partial payments of a bill shall be applied first to regulated service. Regulated service may not be affected by billing disputes over not regulated service. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102, 69-3-201 and 69-3-221, MCA

RULE VII PUBLIC INFORMATION (1) Each exchange carrier must have the following information available for viewing at each business office.

(a) All tariffs associated with the serving carrier.

(b) Exchange maps showing base rate area and zone boundaries from which all customer locations can be determined and mileage and/or zone charges quoted.

(c) Information on plans for major service changes in the area served by the business office. In the alternative, an exchange carrier may provide this information by a toll free number.

(d) Information pertaining to services and rates as proposed in pending tariff or rate change filings. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE VIII CUSTOMER DEPOSITS FOR TELECOMMUNICATIONS SERVICES (1) Deposit requirements for business and residential service must comply with ARM 38.5.1101, et seq. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE IX COMPLAINTS AND APPEALS (1) Complaints. All carriers must promptly investigate customer complaints and inform the customer of proposed action. If requested, the carrier must provide a written statement of its action on the complaint.

(2) Appeals. A carrier must inform a customer that a review by supervisory personnel of an unfavorable action on a bill or complaint is available. If requested the carrier must provide a written statement of the supervisor's action on the complaint. The written statement must also inform the customer that commission review is available and provide the commission's telephone number and address.

(3) Upon receipt of a complaint, either orally or in writing, from the commission or its staff on behalf of a customer or applicant, the carrier shall make a suitable investigation and advise the commission or its staff of the results thereof. Initial response to the commission or its staff shall be provided within five working days. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE X DIRECTORIES (1) An exchange carrier must provide its customers telephone directories at regular intervals (not to exceed 18 months), listing all customers' names, addresses and telephone numbers, except public telephones, addresses and telephone service nonpublished at the customer's request.

(2) The exchange carrier must list its customers (except those customers requesting otherwise) with the directory assistance operators within three business days of service connection. If directory assistance (DA) is provided by another company, the local exchange carrier must submit the DA listing updates to the DA provider within three business days and the DA provider must update its listings within the following three business days.

(3) Upon issuance, a copy of each directory shall be distributed free to all customers served by that directory and a copy of each directory must be provided to the commission and to each public library in the state in the exchange carrier's service area and to any public library in the state requesting a directory. In the case of hotels, motels and other multiline locations, one directory per access line will be provided or two directories for each installed station will be provided at no charge, upon request.

(4) The name of the exchange carrier, the area included in the directory and the month and year of issue must appear on the front cover. Information pertaining to emergency calls, such as for the police and fire departments, must be conspicuously printed on the inside front cover of the directory.

(5) The directory must contain instructions on placing local and long distance calls, calls to repair and directory assistance services, and locations and telephone numbers of exchange carrier business offices within the appropriate service area.

(6) Exchange carriers shall make available at a reasonable charge space in the front part of the directory for interexchange carriers information and rates on long-distance calling, directory assistance, operator services, discount periods, billing inquiries, etc.

(7) Each directory must contain, in the instructional section, the commission's address and telephone number and an explanation of the customer's right to bring complaints and inquiries to the commission.

(8) If there is an error in the directory listing for a customer, the exchange carrier must intercept all calls to the listed number at no charge, for six months or until a new directory is published, whichever occurs first. If there is an error or omission in the name listing of a customer, the correct name and telephone number must be placed in the files of the directory assistance and/or intercept operators and the correct number furnished the calling party upon request or interception.

(9) If a customer's telephone number is changed after a directory is published, the exchange carrier must intercept all calls to the former number for a reasonable period of time and give the calling party the new number unless the customer directs otherwise.

(10) When additions or changes in plant or changes to any other exchange carrier operations necessitate changing telephone numbers to a group of customers, reasonable notice must be given to all affected customers. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XI PAY TELEPHONES (1) Carrier-owned. Each exchange carrier must provide in each exchange at least one pay telephone available to the public at all hours, prominently located and lighted at night. All pay telephones shall be properly maintained and equipped with dialing instructions, a directory, local call price information and appropriate emergen-

cy telephone numbers. All pay telephones must comply with 10-4-121, MCA.

(2) The commission may require a regulated carrier to install pay telephones at locations determined by the commission.

(3) Customer-owned. Each exchange carrier must provide access lines to connect customer-owned pay telephones in accordance with tariffs on file and approved by the commission.

(a) Each exchange carrier shall file an annual report with the commission, listing the pay telephones within its jurisdiction which are not in compliance with applicable tariff requirements on file with the commission. If the pay telephones on the annual report are not brought into full compliance within thirty (30) days following notification of the owners of said pay telephones, the exchange carrier shall immediately terminate service thereto. The provisions of this rule shall be included in the notice sent to the pay telephone owners. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XII AUTOMATIC DIALING - ANNOUNCING DEVICES

(1) An exchange carrier may not knowingly permit an automatic dialing - announcing device to be connected to or operated over its network unless the device is used in accordance with the following:

(a) Within 10 seconds after the called party hangs up, the device automatically creates a disconnect signal or on-hook condition which allows the called party's line to be released. The device terminates all calls, and a disconnect or on hook condition is created when the call is not completed within 30 seconds.

(b) A recorded message begins with a statement announcing the name, address, and call-back telephone number of the calling party, the purpose or nature of the message, and the fact that the message is a recording.

(c) No calls are made to emergency telephone numbers of hospitals, fire departments, law enforcement offices or other entities providing emergency services.

(d) No calls are made before 9:00 a.m. or after 8:00 p.m., mountain standard/daylight time.

(e) No impairment of service, as determined by the exchange carrier, will occur due to the use of the device.

(2) This section should not be construed to apply to any automatic security device installed at the request of the tenant or owner of the premises for security, emergency, health, environmental, or other monitoring purposes.

(3) If the automatic dialing - announcing device user fails to comply with the provisions of this section, the exchange carrier providing originating service must refuse to provide service after notice is given until the noncompliance is remedied. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XIII TERMINATION OF SERVICE (1) A carrier may interrupt service without notice only in emergency situations

or if the service was obtained without the carrier's authorization.

(2) Grounds for termination. Subject to the requirements of these rules, telecommunications services may be discontinued, after notice, as provided in Rule XIII(5), for the following reasons:

(a) Failure to make a security deposit or guarantee.

(b) Nonpayment of undisputed past due bills for regulated services.

(c) Unauthorized interference, diversion or use of telephone service.

(d) Violation of relevant laws, ordinances, commission rules or carrier tariffs, or

(e) Refusal to allow reasonable access to facilities or equipment.

(3) Grounds that do not support termination. None of the following constitute sufficient grounds for discontinuing regulated local exchange service.

(a) The failure of any person, other than the customer against whom termination is sought, to pay any charges due to the telecommunications utility.

(i) Failure to pay for business service at a different location and with a different telephone number is not grounds for disconnecting residential service and vice versa.

(b) Failure to pay an amount in dispute pending before the commission.

(c) Failure to pay for nonregulated service.

(4) All exchange carriers must establish a system of third party notification. That is, if a customer requests that a third party such as a social service, minister, responsible adult, etc., be notified of nonpayment, the exchange carrier must provide such a service, free of charge.

(5) Notice.

(a) Written notice of termination must be sent at least ten days prior to service disconnection and must contain the following:

(i) The reason for disconnection.

(ii) Corrective actions the customer may take.

(iii) Appeal actions the customer may take.

(iv) Cost of reconnection, deposit requirements and any other costs associated with reconnecting the service.

(b) On the business day prior to disconnection a carrier representative must make a reasonable effort to contact and notify the customer of the information in the written notice. The carrier must keep a record showing the name of employee, date and hour of attempted contact and whether the customer was orally notified of disconnection. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XIV ALTERNATIVE OPERATOR SERVICES (1) Any alternative operator services (AOS) company that contracts with privately owned pay telephone instruments, such as customer-owned coin telephones, or to private systems, such as motels, ho-

tels, hospitals and universities, must require that the following criteria are met.

(a) Telephone instruments using alternative operator services must be labeled or there must be posted in close proximity to the instrument the following information to include:

(i) name, address and telephone number of the AOS provider;

(ii) procedure for reporting service difficulties and method of obtaining refunds;

(iii) dialing instructions detailing AOS provider dialing procedures as well as instructions for accessing the local exchange company operator; and

(iv) emergency dialing information.

(b) All privately-owned pay telephone instruments connected to an AOS company are required to provide access to the local exchange operator if "0" only is dialed. In all cases where "0" is dialed and not followed by either "+" or another digit within four seconds, the calling party will be connected to the local exchange operator automatically. All other instruments (hotel/motel, hospital, etc.) must provide the same local exchange operator access after the telephone call has obtained an outside line. Access to the AOS company may be made by dialing "0+." An AOS provider, upon application for a waiver, will be given an opportunity to demonstrate that it has the capability of handling emergency calls coming through the "0" symbol.

(c) All alternative operator assisted calls must be preceded by disclosure of the name of the company handling the call and the charge for making the connection if requested. Any AOS company must identify itself to the called party on collect calls and to the billed party in verifying third party billed calls.

(d) AOS providers may not charge for uncompleted calls.

(e) AOS providers shall provide current price schedules, including any other surcharges, fees, or additional charges to the end customer to this commission on a quarterly basis.

(f) All operators will connect the consumer to the local exchange company operator or explain dialing instructions for such access if so requested by the consumer. There shall be no charge assessed for this information and/or service.

(2) If the AOS subscriber, such as a customer-owned coin telephone or a motel, hotel, hospital or university, fails to comply with the provisions of this rule, the carrier providing originating service must refuse to provide service after notice is given until the noncompliance is remedied. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XV CONSTRUCTION (1) Engineering and construction standards. In determining standard engineering and construction practice, the commission will be guided by the provisions of the American National Standards Institute, the National Electrical Code, the National Electrical Safety Code, the exchange carriers standards association, the rural electrification administration, and such other codes and standards as are

generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. The telecommunications plant shall be designed, constructed, maintained and operated in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with and from service furnished by other public utilities insofar as practical. The carrier shall design and construct the telecommunications facilities to reduce or prevent electromagnetic interference from AC power systems. The carrier shall engage in prior coordination with power utilities in the area before placing new plant or making major changes in existing plant likely to be impacted by the power utility's facilities. Such coordination shall be governed by the latest issue of ANSI/IEEE 776 Guide for Inductive Coordination of Electric Supply and Communications Lines.

(2) Automatic number identification. Exchange carriers shall have as an objective the provision of automatic number identification in all exchanges. All exchange carriers shall file a report with the commission within six months following adoption of this rule, and every six months thereafter, including the status of current exchanges and plans to comply with this provision.

(3) Party line service. Where party line service is provided, no more than four customers shall be connected to any one channel, unless such action is approved by the commission. The exchange carrier may regroup customers in such a way as may be necessary to carry out the provisions of this rule. Upon completion or delay in the meeting of this requirement a report to that effect shall be filed with the commission.

(4) Selective carrier denial. Exchange carriers shall have as an objective the provision of selective carrier denial in all exchanges. All exchange carriers shall file a report with the commission within 18 months following adoption of this rule, and every 6 months thereafter, including progress towards compliance and timetable for completion of implementation. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XVI EMERGENCY OPERATION (1) Carriers shall make reasonable provisions to meet emergencies resulting from failures of lighting or power service, unusual and prolonged increases in traffic, illness of personnel, or from fire, storm, or other acts of God and inform its employees as to procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunications service.

(2) Each central office and interexchange toll switching office or access tandem shall contain as a minimum four hours of battery reserve.

(3) In central offices exceeding 5,000 lines and in all interexchange toll switching offices or access tandems, a permanent auxiliary power unit shall be installed. In central offices without permanently installed emergency power facili-

ties, there shall be a mobile power unit available which can be delivered and connected on short notice. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XVII CONSTRUCTION WORK NEAR EXCHANGE CARRIER FACILITIES (1) Upon receipt of written or verbal notification from the property owner, or from a contractor, of work which may affect its facilities used for serving the public the carrier shall investigate and decide what action if any, must reasonably be taken to protect or alter telephone facilities in order to protect service to the public and to avoid unnecessary damage, such as identifying in a suitable manner the location of any underground facilities which may be affected by the work. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XVIII NETWORK INTERFACE (1) Each exchange carrier shall establish a point of demarcation between the utility facilities and a customer's premises wiring and equipment. It shall be the responsibility of the utility to install and maintain a network interface device in accordance with commission guidelines, the exchange carrier's tariff, and with rules established by the federal communications commission.

(2) The NID shall be located outside the customer's premises unless such location is impractical or the customer requests an inside location. If the NID is located inside, it should be at a point close to the protector and convenient to the customer.

(3) If a customer requests that an NID be placed in a location other than that selected by the utility, and which conforms to the criteria set forth herein, the company may charge the customer for any extra associated work.

(4) For simple one- and two-line business and residence service, all wiring on the customer's premises shall connect to the telephone network through an NID which can be locked by the customer but able to be opened by the exchange carrier when necessary.

(5) An NID shall be installed on all new services when a visit to the customer premises is necessary to establish service. For party line services a selective ringing module will be installed.

(6) Work load permitting, an NID, and selective ringing module where appropriate, shall be installed on all maintenance visits to a customer premises. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XIX CUSTOMER TROUBLE REPORTS (1) Each carrier shall provide for the receipt of customer trouble reports at all hours and make a full and prompt investigation of and response to all complaints. The telecommunications utility shall maintain an accurate record of trouble reports made by its customers for a period of two years. This record shall in-

clude appropriate identification of the customer or service affected, the time, date and nature of the report, the action taken to clear trouble or satisfy the complaint, and the date and time of trouble clearance or other disposition. This record shall be available to the commission or its authorized representatives upon request at any time within the period prescribed for retention of such records. Trouble reports shall be cleared in accordance with service objectives listed in Rule XXIII(7) of these rules.

(2) Provision shall be made to clear all out of service trouble of an emergency nature at all hours, consistent with the bona fide needs of customers and the personal safety of utility personnel. All out of service trouble reports shall be cleared and service restored in accordance with Rule XXIII(7) of these rules.

(3) If unusual repairs are required, or other factors preclude clearing of reported trouble promptly, reasonable efforts shall be made to notify affected customers. Commitments to customers for repair service shall be met in accordance with Rule XXIII(7)(c) of these rules. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XX INSPECTIONS AND TESTS (1) Each carrier shall adopt a program of periodic tests, inspections and preventive maintenance aimed at achieving efficient operation of its system and the rendition of safe, adequate and continuous service.

(2) Each carrier shall maintain or have access to test facilities enabling it to determine the operating and transmission capabilities of all equipment and facilities, both for routine maintenance and for trouble location. The actual transmission performance of the network shall be monitored in order to determine if the carrier's established objectives and operating requirements are met. This monitoring function shall consist of, but not be limited to, circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and transmission surveys of the network. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XXI SERVICE INTERRUPTIONS (1) In the event that service must be interrupted for over four hours for planned work on the facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Emergency service shall be available, as required, for the duration of the interruption. In the event that local exchange service must be so interrupted, the exchange carrier shall attempt to notify each affected customer at least 24 hours in advance of the interruption. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XXII GENERAL (1) Each carrier shall make traffic studies and maintain records as required to determine that

sufficient equipment and an adequate operating force are provided at all times including the average busy hour, busy season. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

RULE XXIII SERVICE OBJECTIVES AND SURVEILLANCE LEVELS

(1) These rules establish required service objectives. The rules include surveillance levels which indicate a need for the telecommunications utility to investigate, take appropriate corrective action, and provide a report of such activities to the commission. The telecommunications utility shall be expected to meet generally accepted industry standards for quality on any service provided by the telecommunications utility that is not covered by these rules.

(2) Service measurements. Each carrier shall make regular, periodic measurements to determine the level of service for each item included in these rules. Measurements and summaries thereof for any of the items included herein shall be provided upon request of the commission or its representatives. Records of these measurements and summaries shall be retained by the telecommunications utility for a period of at least two years.

(3) Installation of service.

(a) Ninety percent of the exchange carrier's service order installations not requiring construction or special engineering shall be completed within three business days after appropriate pre-installation fees are paid. The intervals commence with the receipt of application (unless a later date is requested by the applicant).

(i) Surveillance level: Eighty-five percent in an exchange area for a period of three consecutive months.

(b) Ninety-five percent of the exchange carrier's service orders requiring construction or special engineering shall be filled no later than 30 days after the customer has made such application (except where the customer requests a later date) after appropriate pre-installation fees are paid. In the event of the exchange carrier's inability to so fill such an order, the customer will be advised and furnished the date when it will be available.

(i) Surveillance level: Ninety percent in an exchange area for a period of three consecutive months.

(c) Each exchange carrier shall make commitments to customers as to the date of installation of all service orders. Ninety percent of such commitments shall be met (excepting customer caused delays and acts of God).

(i) Surveillance level: Eighty-eight percent in an exchange area for a period of three consecutive months.

(4) Operator handled calls. Calls requiring timing shall be accurately timed. Each carrier shall maintain adequate personnel to provide an average operator answering performance on a monthly basis as follows:

(a) Eighty-five percent of toll and/or local assistance operator calls answered within ten seconds (equivalent measurements as approved by the commission may be used).

(i) Surveillance level: Eighty percent (or equivalent) for an answering location for a period of three consecutive months.

(b) Eighty percent of directory assistance and intercept calls shall be answered within ten seconds (equivalent measurements as approved by the commission may be used).

(i) Surveillance level: Seventy-five percent (or equivalent) at an answering location for a period of three consecutive months.

(5) Network call completion requirements. Sufficient central office and interoffice channel capacity and equipment shall be provided by the carrier to meet the following requirements during the average busy season, busy hour without encountering blockages or equipment irregularities:

(a) Dial tone within three seconds on 98 percent of calls.

(i) Surveillance level: Ninety-seven and four tenths percent for a central office or remote switch for a period of three consecutive months.

(b) Proper completion of 97 percent of correctly dialed intraoffice calls.

(i) Surveillance level: Ninety-five percent for a central office or remote switch for a period of three consecutive months.

(c) Proper completion of 97 percent of correctly dialed interoffice calls within the local calling area.

(i) Surveillance level: Ninety-five percent for a central office or remote switch for a period of three consecutive months.

(d) Proper completion of 97 percent of correctly dialed interexchange toll calls.

(i) Surveillance level: Ninety-five percent for a central office or remote switch for a period of three consecutive months.

(6) Transmission and noise requirements. All facilities shall meet accepted industry design standards and shall conform to the following transmission design parameters:

(a) Subscriber lines. Newly constructed and rebuilt subscriber lines shall be designed for no more than 8 dB transmission loss at 1000 + 20 Hz from the serving central office to the customer premises network interface. Subscriber lines shall be maintained so that transmission loss does not exceed 8 dB. Subscriber lines shall be designed and constructed so that metallic noise does not exceed 25 dB above reference noise level ("C" message weighting) on 90 percent of the lines. Subscriber lines shall be maintained so that metallic noise does not exceed 30 dB above reference noise level ("C" message weighting).

(b) PBX and multiline trunk circuits. PBX and multiline trunk circuits shall be designed and maintained so that transmission loss from the central office to the point of connection with customer equipment shall not exceed 5 dB (or 6.5 dB loss through a coupling device provided by the exchange carrier). These circuits shall be designed and constructed so that

metallic noise does not exceed 25 dB above reference noise level ("C" message weighting) on 90 percent of the lines. They shall be maintained so that metallic noise does not exceed 30 dB above reference noise level ("C" message weighting).

(c) Interoffice - local calling area. Excluding calls between central offices in the same building, 95 percent of the measurements on interoffice calls within a local calling area shall have from 2 to 10 dB transmission loss at 1000 + 20 Hz and no more than 30 dB metallic noise above reference noise level ("C" message weighting). This measurement shall be made from the line terminals of the originating central office to the line terminals of the terminating central office.

(d) Interexchange toll calls. Ninety-five percent of the transmission measurements on interexchange calls, measured end-to-end, established via trunk-side access connections shall have between 3 and 9 dB loss at 1000 + 20 Hz, and shall have no metallic noise greater than 30 dB above reference noise level ("C" message weighting).

(7) Customer trouble reports.

(a) Service shall be maintained by the carrier in such a manner that the monthly rate of all customer trouble reports, excluding reports concerning interexchange calls or nonregulated customer premises equipment, does not exceed 6 per 100 local access lines per month per exchange. For the purpose of administering this rule, each party line customer shall be considered to have one local access line.

(i) Surveillance level: Eight per one hundred local access lines per month per exchange for a period of three consecutive months.

(b) Ninety percent of out of service trouble reports shall be cleared within 24 hours, excluding Sunday (except where access to the customer's premises is required but not available, or where interruptions are caused by unavoidable causalities and acts of God affecting large groups of customers).

(i) Surveillance level: Eighty-five percent in an exchange area for a period of three consecutive months.

(c) The carrier shall provide to the customer a commitment time by which the trouble will be cleared. Ninety percent of the repair commitments shall be met (excepting customer caused delays and acts of God affecting large groups of customers).

(i) Surveillance level: Eighty-five percent in an exchange area for a period of three consecutive months. AUTH: Sec. 69-3-103, MCA, IMP: Secs. 69-3-102 and 69-3-201, MCA

4. These rules are proposed to establish certain minimum standards for determining if telecommunications service is adequate, pursuant to §§ 69-3-201 and 69-3-102, MCA. Rule ARM 38.5.2717 is being repealed and reenacted into the telecommunication service rules because it is more appropriate in this section.

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 Dennis Crawford, 2701 Prospect Avenue, Helena, Montana 59620-2601 no later than April 28, 1989.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE MARCH 20, 1989.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to the regulation of noxious weed seeds	NOTICE OF AMENDMENT OF RULE 4.12.3011 RELATING TO THE REGULATION OF NOXIOUS WEED SEEDS

TO: All Interested Persons

1. On February 9, 1989 the Montana Department of Agriculture proposed to amend the rule stated in the above entitled matter at page 248 of Issue No. 3 of the Montana Administrative Register.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the amendment is 80-5-112, MCA and implements 80-5-105 and 80-5-120, MCA.

DEPARTMENT OF AGRICULTURE

E. M. Snortland

E. M. Snortland
Director
Department of Agriculture

Certified to the Secretary of State March 20, 1989

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the amendment of rules pertaining to fees	)	NOTICE OF AMENDMENT OF 8. 28.418 ANNUAL REGISTRATION AND FEES AND 8.28.420 FEE SCHEDULE

TO: All Interested Persons:

1. On January 26, 1989, the Board of Medical Examiners published a notice of proposed amendment of the above-stated rules at page 172, 1989 Montana Administrative Register, issue number 2.

2. The Board amended the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF MEDICAL EXAMINERS
THOMAS J. MALEE, M.D.
PRESIDENT

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 20, 1989.

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

In the matter of the amendment of Rule 8.79.301 regarding licensee assessments	)	NOTICE OF THE AMENDMENT OF RULE 8.79.301 LICENSEE ASSESSMENTS
	)	DOCKET #90-89

TO: All Interested Persons:

1. On February 9, 1989, the Milk Control Bureau of the Department of Commerce published a notice of amendment of rule 8.79.301 regarding licensee assessments and reporting of those results at page 250 in the 1989 Montana Administrative Register, issue no. 3.
2. The Bureau has amended the rule as proposed.
3. No other comments or testimony were received.

William E. Ross

William E. Ross, Bureau Chief
Montana Milk Control Bureau

Certified to the Secretary of State March 20, 1989.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Standards For State Approval Of Teacher Education Programs Leading To Interstate Reciprocity of Teacher Certification and Repeal of Business Education	NOTICE OF AMENDMENT OF ARM, CHAPTER 58, STANDARDS FOR STATE APPROVAL OF TEACHER EDUCATION PROGRAMS LEADING TO INTERSTATE RECIPROCITY OF TEACHER CERTIFICATION AND PROPOSED REPEAL OF ARM 10.58.504, BUSINESS EDUCATION

TO: All Interested Persons

1. On December 22, 1988, the Board of Public Education published notice of proposed amendments concerning Standards for State Approval of Teacher Education Programs Leading To Interstate Reciprocity of Teacher Certification and repeal of ARM 10.58.504, Business Education, on page 2629 of the 1988 Montana Administrative Register, issue number 24.

2. The Board has repealed the rule as proposed.

3. The Board has adopted the rules as amended with the following change:

10.58.303 PROFESSIONAL EDUCATION (1) through (1)(f)(i) remain the same.

(ii) Student teaching shall be a comprehensive experience with expanding responsibilities in the full range of teacher activities in a school situation. K-12 programs must include student teaching and appropriate intern experience at both elementary and secondary levels. If the student teaching is only at one level, the intern experience must be at the other level and be of a period of time long enough to demonstrate that the student understands the maturation and instructional needs of the pupils at that level. (1)(f)(iii) through (1)(f)(viii) remain the same.

3. At the public hearing which was held January 26, 1989, one person testified with a concern and no written comments were received prior to January 25, 1989, the date on which the Board closed the hearing record. The Board amended the rule for clarification regarding the concern.

Alan Nicholson
Alan Nicholson, Chairperson
Board of Public Education

BY: Clarabelle Morton

Certified to the Secretary of State March 20, 1989.

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

In the matter of the repeal of A.R.M. 16.2.602 through 16.2.621 and 16.2.701 through 16.2.706 and the adoption of New Rules I through XXVI providing standards and procedures for implementation of the Montana Environmental Policy Act	CORRECTED NOTICE OF ADOPTION OF RULE XXIV (16.2.260), RULE XXV (16.2.261), AND RULE XXVI (16.2.262) RELATING TO FEES

To: All Interested Persons

1. On January 16, 1989, the Board of Health and Environmental Sciences and Department of Health and Environmental Sciences published notice of the repeal of existing rules and adoption of new rules concerning implementation of the Montana Environmental Policy Act at page 226 of the 1989 Montana Administrative Register, issue number 2.

2. The numbers assigned to rules XXIV (16.2.260), XXV (16.2.261), and XXVI (16.2.262) are incorrect and are not relative to the rules concerning Fees. We are correcting the numbers through this notice as reflected in paragraph 3 herein.

3. The Board and Department of Health and Environmental Sciences have assigned the following numbers to the rules:

Rule XXIV (16.2.760) Fees: Determination of Authority to Impose; Rule XXV (16.2.761) Fees: Determination of Amount; Rule XXVI (16.2.762) Use of Fees.

SIDNEY C. PRATT, M.D.
Interim Director
Department of Health and
Environmental Sciences

HOWARD TOOLE, Chairman
Board of Health and
Environmental Sciences

Certified to the Secretary of State March 20, 1989.

BEFORE THE DEPARTMENT OF STATE LANDS
AND THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the Matter of the Amendment, Repeal and Adoption of Rules concerning the regulation of strip and underground coal and uranium mining.	CORRECTED NOTICE OF ADOPTION OF RULE 26.4.519 RELATING TO THICK OVERBURDEN AND EXCESS SPOIL

TO: All Interested Persons:

1. On January 12, 1989, the Department of State Lands and the Board of Land Commissioners published notice of amendment, repeal, and adoption of strip mine rules at page 30 of the 1989 Montana Administrative Register, issue number 1.

2. The number assigned to the Thick Overburden and Excess Spoil rule is incorrect. We are correcting the number through this notice as reflected in paragraph 3 herein.

3. Therefore, the Department of State Lands and the Board of Land Commissioners has adopted rule 26.4.519A, Thick Overburden and Excess Spoil. The original rule 26.4.519 remains Monitoring for Settlement.

Dennis D. Casey, Commissioner
Department of State Lands

Certified to the Secretary of State March 20, 1989.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register	)	NOTICE OF AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION FOR THE MONTANA ADMINISTRATIVE REGISTER

TO: All Interested Persons.

1. On February 9, 1989, the office of the Secretary of State published notice of the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register at page 264 of the 1989 Montana Administrative Register, Issue number 3.

2. The Secretary of State has amended Rule 1.2.419 as proposed.

3. No comments were received.

MIKE COONEY
Secretary of State

Dated this 20th day of March, 1989.

VOLUME NO. 43 OPINION NO. 7

JUVENILE DELINQUENCY - Retention of records under Youth Court Act amendments of 1987;
JUVENILES - Scope of record-sealing requirements under Youth Court Act;
YOUTH COURT ACT - Record-sealing requirements and exceptions;
MONTANA CODE ANNOTATED - Sections 41-5-601, 41-5-604, 41-5-604(5);
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 74 (1984).

HELD: Youth court records concerning a youth proceeded against as or found to be a delinquent youth are not confidential and thus not subject to the sealing requirements of the Youth Court Act as amended by chapter 515, 1987 Montana Laws.

March 8, 1989

Ted O. Lympus
Flathead County Attorney
P.O. Box 1516
Kalispell MT 59903-1516

Dear Mr. Lympus:

You have requested my opinion on the following question:

> Within the record-sealing requirements of the Youth Court Act, what is the meaning of the language added to section 41-5-604(5), MCA, during the 1987 legislative session that created an exception from sealing for those records "to which access must be allowed under 41-5-601"?

The resolution of your request necessitates an examination of 1987 amendments that affected both the record-sealing and confidentiality provisions of the Youth Court Act. These amendments were generally part of the 1987 Montana Laws, chapter 515, and passed by the Fiftieth Legislature as House Bill 470. Under section 41-5-604(5), MCA, as modified, the sealed records requirement which generally extends to all youth court records does "not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601." Your question concerns

the meaning of the term "records" to which section 41-5-601, MCA, mandates access.

Prior to enactment of House Bill 470, section 41-5-601, MCA, provided in full:

> Publicity. (1) No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision except as provided in subsection (2).
>
> (2) When a petition is filed under 41-5-501, publicity may not be withheld as to the identity of any youth formally charged with or proceeded against or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult.

Thus, prior to 1987 publicity was prohibited in both a proceeding to find a youth delinquent and a proceeding to find a youth in need of supervision, except in the case of a delinquency proceeding in which the youth was alleged to have committed an offense punishable as a felony if committed by an adult.

Section 41-5-601, MCA (1985), as quoted above, was amended in 1987 by a combination of two legislative bills. For purposes of this opinion, analysis of the modification of subsection (1) of section 41-5-601, MCA, by section 12 of House Bill 470 is most significant. The amended subsection presently reads:

> Confidentiality. (1) No information shall be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

§ 41-5-601(1), MCA (1987). Comparing the prior language quoted in the preceding paragraph, the heading "Publicity" was changed to "Confidentiality." Additionally, the phrase "identity of" the youth was modified to "information ... concerning" a youth. Most importantly, the bar against disseminating information concerning proceedings to find a youth delinquent was deleted.

The legislative deletion of the publicity prohibition for delinquency proceedings has the effect of opening

access to these matters. In an exhibit that the sponsors of House Bill 470 prepared to explain their bill to the 1987 House and Senate Judiciary Committees, the amendments to section 41-5-601, MCA, were described as follows:

> Revises publicity provisions to open all court proceedings regarding youths charged as delinquents (except for a transfer hearing). Continues to prohibit publicity regarding youths in need of supervision.

Minutes, House Judiciary Committee, February 17, 1987, Exhibit A at 2. I conclude that when the 1987 Legislature amended section 41-5-604(5), MCA, to enlarge the sealing exception to records "to which access must be allowed under section 41-5-601," the intent was to not seal the records related to delinquency proceedings, since these proceedings were deliberately opened by contemporaneous amendments within House Bill 470 to section 41-5-601, MCA.

A separate 1987 amendment to section 41-5-601, MCA, of the Youth Court Act provided access for school officials to information about youthful drug and alcohol offenders. Chapter 462, section 4 of the 1987 Montana Laws added a subparagraph (4) to section 41-5-601, MCA, that reads in its entirety:

> (4) The identity of any youth who admits violating or is adjudicated as having violated 45-5-624 [minor in possession of alcohol] or 45-9-102 [criminal possession of dangerous drugs] may be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

Arguably, the "access" exception to record sealing found within section 41-5-604(5), MCA, could be interpreted to cover the access to these drug and alcohol offense records described in section 41-5-601, MCA. However, the quoted language is narrowly drawn and specifically directs disclosure of only the youth's identity and, presumably, the nature of his offense to school officials. Furthermore, the last sentence of the subparagraph expressly prohibits any further disclosure. I conclude that the drafters of House Bill 470 did not

contemplate that the expanded record-sealing exception of section 41-5-604(5), MCA, would allow disclosure of the information described in the distinct legislative amendments presently embodied in section 41-5-601(4), MCA. For similar reasons, I conclude that a further amendment, codified as subsection (3) to section 41-5-601, MCA, which grants a victim the right to know the identity and disposition of a youth does not create an exception to the record-sealing requirements in section 41-5-604, MCA, unless independently mandated by section 41-5-601(1), MCA.

Summarizing my analysis, prior to 1987 the Youth Court Act specifically prohibited publicity about a youth proceeded against as or found to be a youth in need of supervision or a delinquent youth, except where the underlying offense would be punishable as a felony if the youth were an adult. Following the 1987 amendments, confidentiality provisions were retained only with regard to a youth proceeded against or found to be a youth in need of supervision. I conclude that the Legislature intended to open access to delinquent youth proceedings and the record-sealing exception set forth in section 41-5-604(5), MCA, was modified to allow disclosure of those proceedings.

THEREFORE, IT IS MY OPINION:

> Youth court records concerning a youth proceeded against as or found to be a delinquent youth are not confidential and thus not subject to the sealing requirements of the Youth Court Act as amended by chapter 515, 1987 Montana Laws.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 8

BUSINESS REGULATION - Advertisement of real estate; finder's fees;
LICENSES, PROFESSIONAL AND OCCUPATIONAL - Advertisement of real estate; finder's fees;
REAL ESTATE AGENTS, BROKERS, DEALERS, AND SALESMEN - Advertisement of real estate; finder's fees;
MONTANA CODE ANNOTATED - Sections 37-51-101 to 37-51-512, 37-51-102(3), 37-51-306, 37-51-321(16);
OPINIONS OF THE ATTORNEY GENERAL - 34 Op. Att'y Gen. No. 23 (1972);
MONTANA LAWS OF 1957 - Chapter 129, section 1.

HELD: 1. A person is not required to be licensed as a real estate broker or salesman in order to obtain and organize information from potential sellers of real estate, and, for a fee charged to the seller only, to advertise that information to interested potential buyers.

2. A person is not required to be licensed as a real estate broker or salesman in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate.

March 10, 1989

John Dudis, Chairman
Board of Realty Regulation
Department of Commerce
1424 Ninth Avenue
Helena MT 59620

Dear Mr. Dudis:

You have requested my opinion on the following questions:

1. Is it lawful for a person who is not licensed as a real estate broker or salesman to obtain and organize information from potential sellers of real estate, and, for a fee charged to the seller only, to make that information available by public display to interested potential buyers?

2. Is it lawful for a person who is not licensed as a real estate broker or

salesman to pay a fee, commission, or compensation to another who is not licensed as a broker or salesperson for referring the name of a potential buyer of real estate?

3. Is it lawful for a person who is licensed as a real estate broker to pay a fee, commission, or compensation to another who is not licensed as a broker or salesman for referring the name of a potential buyer of real estate?

The answer depends upon an interpretation of the licensing act for real estate brokers and salesmen, §§ 37-51-101 to 512, MCA. The act provides in pertinent part:

> It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman or otherwise complying with this chapter. [§ 37-51-301(1), MCA.]
>
> ....
>
> A single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. [§ 37-51-103, MCA.]
>
> ....
>
> It is unlawful for a licensed broker to employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman. [§ 37-51-306, MCA.]
>
> ....
>
> "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same

> negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease. [§ 37-51-102(3), MCA.]

The activities called into question by your request do not fall within the enumerated exemptions in section 37-51-103, MCA. The question is thus whether the activities are included in the definition of broker, thereby subjecting the person performing the activities to the criminal penal penalties provided by section 37-51-323, MCA, and to regulation by the Board of Realty Regulation.

Your first question concerns a hypothetical unlicensed person who obtains and organizes information for potential sellers, and, for a fee charged to the sellers, makes the information available by advertisement or by public display. Your facts indicate that no agency relationship is created by which the person undertakes to attempt to negotiate a sale or disposition of property. According to the facts presented, the unlicensed person does not show the property, set up closings, assist in the preparation of a buy-sell agreement, or hold earnest money. Essentially, your question describes the advertising of real estate. The first two sentences of section 37-51-102(3), MCA, do not apply to this situation, since no negotiations take place under the facts presented by your question and no sale or other disposition of property is actually conducted. The last clause of the

third sentence does not apply to your question, because the fee is not charged to the buyer. Thus, the controlling language is the first part of the third sentence:

> The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both[.]

§ 37-51-102(3), MCA.

An ambiguity exists in the quoted sentence, which may be construed to mean:

1. engaging in the business in connection with a contract by which he undertakes primarily to promote the sale ... of real estate through its listing in a publication issued primarily (a) for the purpose of promoting the sale of real estate, or (b) for the purpose of referring information concerning real estate to brokers, or (c) both; or

2. engaging in the business in connection with a contract (a) by which he undertakes primarily to promote the sale ... of real estate through its listing in a publication issued for the purpose of promoting the sale of real estate, or (b) for the purpose of referral of information concerning real estate to brokers, or (c) both.

The first interpretation is a plain, grammatically-correct reading of the sentence. The second interpretation is the one relied upon in 34 Op. Att'y Gen. No. 23 at 156, 157 (1972) as follows:

> The question then becomes whether the "referral of information" clause refers to a person who "undertakes primarily to promote" through "listing in a publication".
>
> ....

> It would appear, then, that subsection (b) of section 66-1925 [R.C.M. 1947] providing "through its listings in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both", refers to two distinct situations. The use of the word "both" at the end of the provision serves to substantiate this proposition.
>
> ....
>
> The object sought to be achieved by the Montana legislature in enacting subsection (b) of section 66-1925, R.C.M. 1947, was to regulate, by licensing, those operations which charge an advance fee and/or collect a fee in connection with a contract negotiated primarily for the purposes of promoting the sale, lease or disposition of real estate within this state, whether it be done by listing such information in a publication or by the referral of information to brokers, or both.

Upon examination of the legislative history of the statute, infra, I am convinced that the reasoning in 34 Op. Att'y Gen. No. 23 (1972) is not sound. However, the conclusion reached in that opinion, that a corporation operating a computer referral service for the purpose of promoting the sale of real estate is a "broker," remains correct because the facts therein indicated the existence of a publication, via computer bank, for referral of information to brokers.

The critical language of section 37-51-102(3), MCA, derives from an amendment in 1957:

> A 'real estate broker,' within the meaning of this act, is a person who for a compensation, or promise thereof, sells or offers for sale, buys or offers to buy, lists or solicits for prospective purchasers, receives or demands an advance fee, negotiates, or offers to negotiate, either directly or indirectly, whether as the employee of another or otherwise, the purchase, sale, exchange of real estate, or any interest therein, for others, as a whole or partial vocation. The word 'person' as used in this act, shall be construed to mean and include a corporation. The term 'advance fee' as used in this act is a fee contracted for, claimed, demanded,

> charged, received or collected for a listing, advertisement or offer to sell or lease property in a publication issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, other than a newspaper of general circulation, prior to the printing thereof. [Emphasis in original.]

1957 Mont. Laws, ch. 129, § 1.

It is apparent that when the language "in a publication issued primarily for the purpose of promoting the sale ... or for referral to real estate brokers" was enacted, it was intended that "referral to real estate brokers" was to be read in conjunction with "publication." When the statute was rewritten in the 1963 Montana Laws, chapter 250, section 2, the word "advertisement" and the exception for newspapers were deleted.

The Montana Supreme Court in Union Interchange, Inc. v. Parker, 138 Mont. 348, 357 P.2d 339 (1960), examined the question of whether advertising for the purpose of bringing buyer and seller together was an activity regulated by section 66-1903, R.C.M. 1947, as it read prior to 1957, in pertinent part:

> A "real estate broker," ... is a person who for a compensation, or promise thereof, sells or offers for sale, buys, or offers to buy, negotiates, or offers to negotiate, either directly or indirectly ... the purchase, sale, exchange of real estate[.]

The Court held that advertising was not encompassed by the definition of "broker." The Court noted that, subsequently, the 1957 amendment broadened the definition to cover a business conducting the advertisement of property.

Subsequent to the 1963 amendment which deleted "advertisement" and the exception for newspapers, the statute was construed by the federal district court to exclude from regulation the distribution of catalogs, confidential listings, and the like, on a nationwide scale. Bradt v. Strout Realty, Inc., 478 F. Supp. 1259 (D.C. Mont. 1979). The opinion contains dicta to the effect that the act of collecting a fee for the advertisement of real estate for sale is forbidden. Id. at 1261. However, I am persuaded by the interpretation of the Montana Supreme Court and by the affirmative act

of the Legislature in 1963, removing the word "advertisement" from the list of regulated activities, that the mere advertisement of a seller's property for a fee charged to the seller does not constitute an act regulated by the real estate broker licensing statutes. While a business which performs solely an advertising function is not required to be licensed, the Board of Realty Regulation has the authority to determine whether such business is also conducting other activities which do require a license.

Turning to your second and third questions, which concern payment to an unlicensed person for the referral of the name of a potential buyer, an examination of section 37-51-102(3), MCA, is again necessary. With respect to the third sentence of that section, my rejection of the interpretation followed in 34 Op. Att'y Gen. No. 23, supra, negates application of the section to a contract entered into "for referral of information concerning real estate to brokers." Nor does the third sentence, as I interpret it, cover the collection of a so-called "finder's fee." As previously mentioned, the second sentence does not apply to the facts presented, since no sale is conducted. The question thus becomes whether the language of the first sentence, "negotiates or attempts to negotiate," includes the collection of a finder's fee for the referral of the name of a potential buyer. It is my opinion that it does not.

Traditionally, in real estate, there has existed a distinction between a broker and a finder, as explained by one court:

> [S]uch distinction as exists between these two terms is more a matter of trade usage than legal definition. In general, a finder is an independent actor whose role is that of a middleman who introduces the parties, supplies the information to one or both about the other and is required to do little else, whereas a broker negotiates on behalf of one of the parties or performs, with the interests of one party and against the interests of the other. ... The finder is a person whose employment is limited to bringing the parties together so that they may negotiate their own contract.

Amerofina, Inc. v. U.S. Industries, 335 A.2d 448, 451 (Pa. Super. Ct. 1975). See also Tyrone v. Kelley, 507 P.2d 65, 70 (Cal. 1973). The distinction turns upon whether the middleman has been invested with any authority to advise or to negotiate the sale or purchase of property and whether either party has relied upon him

for his skill or judgment. Property House, Inc. v. Kelley, 715 P.2d 805, 811 (Haw. 1986). The finder's obligation ends upon the introduction of the parties to one another. See Burke, Law of Real Estate Brokers (Little, Brown & Co. 1982), § 4.5.2. at 212, § 5.5 at 261.

The majority of jurisdictions have rejected the finder/broker distinction for regulatory purposes. Generally, these opinions rest upon a broad interpretation of the term "negotiate," for example, the following construction:

> A broker "negotiates" just as much when he brings the parties together in such a frame of mind that they can by themselves evolve a plan of procedure, as when he himself carries on the discussion and personally induces an agreement to accept a specific provision.

Baird v. Krancer, 246 N.Y.S. 85, 88 (N.Y. Sup. Ct. 1930). See also Corson v. Keane, 72 A.2d 314 (N.J. 1950); Brakhage v. Georgetown Associates, Inc., 523 P.2d 145 (Colo. Ct. App. 1974); Watts v. Andrews, 649 P.2d 472 (N.M. 1982).

In contrast, it has been stated:

> [T]o constitute negotiation the efforts of a broker must, at a minimum, include bringing together a prospective purchaser and a prospective seller in an attempt to facilitate the sale, and these efforts must have proceeded to the point where the prospect would be reasonably considered a realistic prospect for the purchase of the property.

Garafano v. Wells, 458 A.2d 1122 (Vt. 1983). In accord, see Loyd v. Saffa, 719 P.2d 844 (Okla. Ct. App. 1986); Bottomly v. Coffin, 399 A.2d 485 (R.I. 1979).

Other states have provided for the regulation of finders as brokers through statutory language which more directly encompasses the activity of soliciting for purchasers. See, e.g., Diversified Gen. Corp. v. White Barn Golf Course, 584 P.2d 848 (Utah 1978) ("assists or directs in the procuring of prospects"); Property House, Inc. v. Kelley, 715 P.2d 805 (Haw. 1986) ("solicits for prospective purchasers"); King v. Clifton, 648 S.W.2d 193 (Mo. Ct. App. 1983) ("assists or directs in the procuring of prospects calculated to result in sale of real estate").

The Montana Supreme Court has not addressed the question of whether one who performs a traditional "finder" role must be licensed in order to collect a commission or fee. In Diehl & Associates, Inc. v. Houtchens, 173 Mont. 372, 567 P.2d 930, 935 (1977), the Court noted a distinction between

> a brokerage contract which requires a broker to merely find a purchaser and a brokerage contract which requires a broker to sell, make or effect a sale. In the first case the broker earns his commission when he procures a buyer able, ready and willing to purchase on the seller's terms. A broker employed to sell or effect a sale does not earn his commission until he completes the sale.

In Diehl, the contract required completion of a sale, and therefore no further elucidation of a contract to find a purchaser was given by the Court. It has been held that a broker is entitled to his commission if the broker was the "procuring force" in bringing the buyer and seller together. Barrett v. Ballard, 37 St. Rptr. 2038, 622 P.2d 180 (1980); Adams v. Cheney, 203 Mont. 187, 661 P.2d 434 (1983). However, there is a distinction between merely referring the name of a prospective purchaser to a broker or to the seller and producing a buyer ready, willing, and able to purchase at the terms set out by the seller. Since none of the Montana case law has addressed the point, and since the Montana statute does not expressly encompass a finder's activities, I will not declare that the mere referral of a name constitutes an act regulated by the licensing statutes, which are penal in nature and thus strictly construed.

Your third question requires interpretation of section 37-51-321(16), MCA, which provides for revocation or suspension of the license of a broker for

> paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter.

This section must be construed harmoniously with sections 37-51-306 and 37-51-102(3), MCA, and any ambiguity must be resolved by the interpretation which furthers the intent of the Legislature. Section 37-51-306, MCA, prohibits a licensed broker from compensating a person for performing any of the regulated acts. The regulated acts are listed in the definition of broker, § 37-51-102(3), MCA, which I have

interpreted, supra, to exclude the collection of a finder's fee for the referral of the name of a potential buyer. A broker's license should therefore not be revoked or suspended for paying a finder's fee, where the payee does not perform any negotiation or other services regulated by the act. Section 37-51-321(16), MCA, is penal in nature and accordingly should be strictly construed.

THEREFORE, IT IS MY OPINION:

1. A person is not required to be licensed as a real estate broker or salesman in order to obtain and organize information from potential sellers of real estate, and, for a fee charged to the seller only, to advertise that information to interested potential buyers.

2. A person is not required to be licensed as a real estate broker or salesman in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

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

IN THE MATTER of the Petition by NORTHERN TANK LINE, INC., Miles City, Montana, for a Declaratory Ruling as to the Procedure for Dividing a Certificate of Public Convenience and Necessity and the effect of ARM 38.3.2016 on Insurance Coverage.	)	TRANSPORTATION DIVISION DOCKET NO. T-9208

DECLARATORY RULING

1. On January 13, 1988, the Montana Public Service Commission (Commission) received a Petition for a Declaratory Ruling from Northern Tank Line, Inc. (Northern). The issues raised by Northern are as follows:

(a) Whether a carrier's lease of authority to transport a commodity such as asphalt described within a broader term such as petroleum products, while retaining authority to transport other commodities described within such broader terms, is a lease of an "integral segment" of such carrier's authority within the meaning of 69-12-326, MCA?

(b) Whether the Commission may accept a carrier's surrender of its certificate and reissue two certificates to that carrier, each covering part of the authority previously granted in the single certificate, without following the notice and hearing requirements of 69-12-321, MCA, governing applications for certificates, and without applying the standards for decision on such applications set forth in 69-12-323, MCA?

(c) Whether a carrier which leases its authority is required, under ARM 38.3.2016, to carry in its name the insurance on the operations of the lessee carrier.

2. On March 4, 1988, the Commission issued a Notice of Petition. Petitions to intervene were filed by Keller Transport, Inc., H.F. Johnson, Big Z, Inc., Security Armored Express, Inc. and Valtrans, Ltd. A hearing was held on June 28, 1988. Briefs were submitted thereafter by all parties.

3. At the hearing, the Commission took administrative notice of the following:

a. The Commission has previously considered a carrier's lease of authority to transport a commodity such as

asphalt, described in its certificate within a broader term such as "petroleum products," to be a lease of an "integral segment" of such carrier's authority as that term is used in § 69-12-326, MCA.

b. In situations such as described in paragraph 3(a) above, the Commission's past practice has been to accept a carrier's surrender of its certificate and to reissue two certificates to that carrier, each encompassing a part of the authority previously granted in a single certificate, without following the notice and hearing requirements of § 69-12-321, MCA, and without applying the standards set forth in § 69-12-323, MCA.

c. In situations described by paragraphs 3(a) and 3(b) above, the Commission's past practice has been to require that the lessee and lessor file proof of insurance coverage for the respective portion of the authority allotted to each. The Commission has not previously required that a lessor maintain insurance in its own name, on the equipment and operations of its lessee.

d. All files and records of the Commission showing the frequency with which the Commission has divided a certificate, as described in paragraph b above.

e. Any files or records of the Commission containing written interpretations, statements of policy, or orders, regarding the construction of ARM 38.3.2016 -- and specifically whether a lessor must carry insurance on the operations of a certificate lessee.

f. Chapter 107, 1969 Montana Session Laws (Petitioner's Exhibit #1).

g. Montana State Senate, Highways and Transportation Committee, Minutes of meeting held January 28, 1969 (Petitioner's Exhibit #2).

h. Intermountain Tariff Bureau, Inc., Tank Transport Tariff No. 29-A, Items 562 and 545.

4. The first issue presented by Northern requires an interpretation of § 69-12-326, MCA, which provides in pertinent part as follows:

> Lease of certificate. (1) An authorized carrier operating within the state may lease its certificate or any integral segment thereof to another carrier only by approval of the commission. The contract or lease under which the certificate is leased must be in writing and approved by the commission prior to any operation under the certificate.
>
> * * * * *
>
> (2) Operation under the certificate is prohibited until approved by the commission in writing. During the period of the

> contract or lease, transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner (lessor) are prohibited.

Under this statute, the Commission is charged with determining whether or not "road asphalt" constitutes an "integral segment" of a certificate authorizing transportation of all petroleum and petroleum products. Obviously, interpretation of what constitutes an "integral segment" of a certificate must be on a case-by-case basis.

One consideration is whether or not such a certificate division would duplicate existing authority, contrary to the intent of § 69-12-326(2), MCA. Cf. Stearn v. United States, 87 F.Supp. 596 (W.D. Vir. 1949), CF Tank Lines, Inc., 109 M.C.C. 688 (1971), Nationwide Auto Transporters, Inc., 116 M.C.C. 8 (1971) and Contractors Hauling Service, Inc., 104 M.C.C. 343 (1967). Another consideration is the effect such a certificate division could have on the Commission's ability to fulfill its duty to enforce the Montana Motor Carrier Act. See § 69-12-201, MCA.

The Commission holds that "road asphalt" constitutes an integral segment of a "petroleum and petroleum products" certificate, and therefore, the "road asphalt" portion may be leased pursuant to the provisions of § 69-12-326, MCA. The Commission finds that there are sufficient differences between road asphalt, and other petroleum products, that such a division and lease of authority would not create a duplication of service, nor would it inhibit the Commission from enforcing the Montana Motor Carrier Act. Road asphalts are physically and chemically distinct from other petroleum products (e.g. gasoline, diesel fuel, solvents and other light fuels). Road asphalts must be transported at high temperatures in special insulated containers, unlike most other petroleum products. They also require special handling, are separately tariffed, and exclusively intended for use on road and highway construction projects. Furthermore, the provisions of § 69-12-326(2), MCA, specifically prohibit an owner/lessor from hauling under the leased portion of a certificate.

5. The Petitioner contends that the Commission's practice of division and reissuance of two certificates upon approval of a lease of an integral segment of authority requires compliance with the notice and hearing requirements of § 69-12-321, MCA, and application of the standards for decision set forth in § 69-12-323, MCA. However, the Constitutional and statutory provisions cited by Petitioner are not self-executing. See Kadillak v. The Anaconda Co., 184 Mont. 127, 602 P.2d 147 (1979). In particular, Article II, Sec. 8 of the Montana Constitution provides that:

> The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in

> the operation of the agencies prior to the final decision as may be provided by law. (emphasis added)

Likewise, § 2-4-631(1), MCA, provides:

> (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply. (emphasis added)

The sections of the Montana Motor Carrier Act which authorize leases of certificates do not contain any provision requiring a public hearing. §§ 69-12-325 and 69-12-326, MCA. The Commission therefore holds that the notice and hearing provisions of § 69-12-321, MCA, and the standards for decision in § 69-12-323, MCA, are not applicable to certificate lease applications brought before the Commission pursuant to § 69-12-326, MCA.

6. Although unnecessary for the decision in this case, the Commission notes that the dormancy principle has no application in Montana, except possibly with respect to Class D Certificates, see In the Matter of the Sale and Transfer of PSC Certificate No. 5298 from Matlack, Inc. to Hampton Enterprises dba Hampton Water Service, Docket No. T-5818, Order No. 4126 (1981), §§ 69-12-323(3) and 69-12-314, MCA; and the issue of public convenience and necessity may not be relitigated in a lease proceeding, see Chabut v. Public Service Commission of West Virginia, 365 S.E.2d 391 (W.V. 1987) and Application of Skjonsby Truck Line, Inc., 357 N.W.2d 227, 232 (N.D. 1984).

7. Intervenors Big Z, Inc., Security Armored Express, Inc. and Valtrans, Ltd., contend that the reenactment doctrine has imputed the force of law to past Commission practice on these matters, citing Hovey v. Department of Revenue, 203 Mont. 27, 659 P.2d 280 (1983). The Commission's conclusions on the above issues renders a decision on the applicability of the reenactment doctrine unnecessary, but we note that unlike Hovey, there is no previous or existing formal administrative rule or agency decision specifically ruling on these issues. And further, the parties have failed to point to any specific date of alleged legislative reenactment (eg. adoption or amendment of § 69-12-326, MCA), or to establish that the legislature was aware of a particular administrative policy on that date (or the grounds for such a presumption). There was no showing whatsoever of any previous formal or informal Commission determination that "road asphalt" constitutes an "integral segment" of "petroleum and petroleum products." In summary, the record before us fails to clearly establish that the reenactment doctrine applies in this case.

8. The last issue involves ARM 38.3.2016 and its application to a lease, division and reissuance situation. The Commission finds that the present wording of the rule is clear,

in that it holds the owner/lessor of a certificate responsible for all acts of its lessee. Commission practice has been to require the lessor to carry insurance only on that portion of the certificate under which it is operating. The lessor has not been required to carry insurance in its own name on the operations of the lessee, and likewise, the lessee has not been required to carry insurance in its name on the operations of the lessor. The Commission finds this practice reasonable. Petitioner contends that perhaps the rule language should be amended to reflect this Commission practice. The Commission agrees that the rule does not specifically embody this practice, and notes that the Petitioner may formally request such an amendment, if it so desires, pursuant to § 2-4-315, MCA, and ARM 38.2.101.

Done and Dated this 27th day of December, 1988 by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

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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