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# **MONTANA ADMINISTRATIVE REGISTER**

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**NOV 18 1991**

**OF MONTANA**

1991 ISSUE NO. 21  
NOVEMBER 14, 1991  
PAGES 2182-2237



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NOV 18 1991

## OF MONTANA

### MONTANA ADMINISTRATIVE REGISTER

#### ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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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BEFORE THE BOARD OF DENTISTRY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of rules pertaining ) THE PROPOSED AMENDMENT OF  
to fees ) 8.16.405 FEE SCHEDULE,  
 ) 8.16.606 FEE SCHEDULE AND  
 ) 8.17.501 FEE SCHEDULE

TO: All Interested Persons:

1. On December 5, 1991, at 10:00 a.m., a public hearing will be held in the Elkhorn B Room, Park Plaza, 22 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.16.405 FEE SCHEDULE

(1) through (3) will remain the same.

(4) Active Renewal, in-state 70.00 78.00

(5) Inactive Renewal, out-of-state 70.00 78.00

(6) through (9) will remain the same."

Auth: Sec. 37-1-134, 37-4-205, MCA; IMP, Sec. 37-4-307,

MCA

"8.16.606 FEE SCHEDULE

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

(3) Active renewal, in-state 50.00 28.00

(4) Inactive renewal, out-of-state 50.00 28.00

(5) through (9) will remain the same."

Auth: Sec. 37-1-134, 37-4-205, MCA; IMP, Sec. 37-4-406,

MCA

"8.17.501 FEE SCHEDULE

(1) through (5) will remain the same.

(6) ~~In-state~~ License renewal by 500.00 390.00

~~December March 1st of each year, which may be paid in 2 installments of \$250 each on October 1st and December 1st of each year~~

(a) ~~Renewal fee for inactive and out-of-state licensees must be paid by December 1st of each year~~ 200.00

(7) Duplicate, replacement or second--50.00 30.00  
~~address license~~

(8) ~~A 10% penalty fee shall be assessed for each month or portion thereof that the payment of the renewal fee is delayed after the expiration date~~

(9) ~~All fees are non-refundable"~~

Auth: Sec. 37-1-134, 37-29-201, 37-29-304, MCA; IMP,  
Sec. 37-29-304, MCA

**REASON:** These amendments are being proposed to make fees commensurate with program area costs.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, Arcade Building, Lower Level, 111 North Jackson, Helena, Montana 59620-0407, no later than December 12, 1991.

4. Robert P. Verdon, attorney, has been designated to preside over and conduct the hearing.

BOARD OF DENTISTRY  
WAYNE L. HANSEN, PRESIDENT

BY:

Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 4, 1991.

BEFORE THE BOARD OF MORTICIANS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of rules pertaining ) 8.30.408 INSPECTIONS AND  
to inspections and sanitary ) 8.30.601 SANITARY STANDARDS  
standards - preparation room ) - PREPARATION ROOM

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 14, 1991, the Board of Morticians  
proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new  
matter underlined, deleted matter interlined)

"8.30.408 INSPECTIONS (1) An annual inspection fee as  
stated in ARM 8.39.407 shall be charged to each licensed  
mortuary and shall be included in the mortuary annual renewal  
fee.

(2) A mortuary shall be inspected ~~in a manner to be~~  
prescribed by the board in accordance with subchapter 6 of  
these rules.

(3) A mortuary ~~may be subjected to inspection~~ shall be  
inspected if its location has changed.

(4) The board shall be notified within 30 days prior to  
moving or opening a new mortuary so arrangements can be made  
for inspection prior to opening.

(5) will remain the same.

(6) Reinspection shall be made of a mortuary that does  
not meet the requirements of the board in ARM 8.30.601 through  
8.30.606. A fee of \$75.00 shall be paid for each  
reinspection."

Auth: Sec. 37-19-202, 75-10-1006, MCA; IMP Sec. 37-19-  
403, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-  
1005, 75-10-1006, MCA

**REASON:** The proposed changes to the inspection rules are  
necessary to implement the provisions of House Bill 239  
(sections 75-10-1001 through 75-10-1006, MCA) on infectious  
waste and to assure that new facilities are inspected to meet  
all requirements of state statutes or if a problem or  
violation is noted to set fees for reinspection to cover the  
administrative costs of that area to be commensurate with  
costs under section 37-1-134, MCA.

"8.30.601 SANITARY STANDARDS - PREPARATION ROOM (1)  
through (7) will remain the same.

(8) Waste ~~and contaminated materials~~ and refuse shall be  
disposed of in a sanitary manner ~~at the discretion of the~~  
board.

(a) Infectious wastes and sharps must be stored for disposal and disposed of in accordance with Title 75, chapter 10, part 10, MCA.

(b) The use of standard embalming agents is a scientifically proven method of rendering infectious wastes noninfectious.

(c) Used sharps, even if sterilized, must be placed in leakproof, rigid, puncture-resistant containers and securely taped or (capped when full to prevent the loss of the contents during) waste disposal processes."

Auth: Sec. 75-10-1006, MCA; IMP, Sec. 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, MCA

REASON: The board proposed the infectious waste rule to comply with the requirements of House Bill 239 (sections 75-10-1001 through 75-10-1006, MCA) to protect the public health and environmental sciences with the best current technical information.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Morticians, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than December 12, 1991.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Morticians, Lower Level, Arcade Building, Helena, Montana 59620-0407, no later than December 12, 1991.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those person who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the funeral homes directly affected has been determined to be 9 based on the 89 funeral homes licensed in Montana.

BOARD OF MORTICIANS  
J. PATRICK HOFFMAN, CHAIRMAN

BY: Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 4, 1991.



BEFORE THE FINANCIAL DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of rules pertaining ) THE PROPOSED AMENDMENT OF  
to consumer loan licensees - ) 8.80.301 CONSUMER LOAN  
advertising ) LICENSEES - ADVERTISING

TO: All Interested Persons:

1. On December 10, 1991, at 11:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The proposed amendment will read as follows:

"8.80.301 CONSUMER LOAN LICENSEES - ADVERTISING

(1) and (1)(a) will remain the same.

(b) The full text of radio or television advertising shall be retained. ~~Licensees shall not solicit loans by telephone excepting with present or former customers.~~

(2) through (4) will remain the same."

Auth: Sec. 32-5-401, MCA; IMP, Sec. 32-5-401, MCA

**REASON:** The Montana Consumer Finance Association, through its attorneys Harrison, Loendorf and Poston, has submitted a Petition to Amend Rule 8.80.301. The reasons given for this petition are as follows:

As a result of changes in the law over the years, there are no significant differences between consumer finance companies, banks, credit unions, and savings and loan associations in the area of lending. All of these institutions are defined as regulated lenders under section 31-1-111, MCA, and are consequently exempt from interest rate limitations pursuant to section 31-1-122, MCA. Limits that formerly existed on amounts that could be loaned have also been removed. Consequently, it would appear unfair to impose restrictions on one lender that are not imposed on a competing lender.

Investigation reveals that this rule apparently stems from complaints of consumer loan licensees from years ago. The complaints concern competitors calling the particular lenders' customers. This would be the worst possible reason for such a rule. It prevents competing lenders from submitting better proposals and keep such proposals from the knowledge of the borrower.

This provision would appear to be at odds with the federal antitrust laws, in that it is anticompetitive rather than procompetitive.

It would appear to be at odds with the equal protection clause of both the federal and state constitutions and may be in violation of the first amendment of the federal constitution which protects commercial speech.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Financial Division, Room 50, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 59620-0407, no later than December 10, 1991.

4. Annie M. Bartos, attorney, has been designated to preside over and conduct the hearing.

FINANCIAL DIVISION

BY:

Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 4, 1991.

BEFORE THE BUSINESS DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of new rules pertain-	)	THE PROPOSED ADOPTION OF NEW
ing to development loans to	)	RULES PERTAINING TO THE
Microbusiness Development	)	MICROBUSINESS FINANCE PROGRAM
Corporations and loans to	)	
microbusinesses	)	

TO: All Interested Persons:

1. On December 18, 1991, at 10:00 a.m., a public hearing will be held in the upstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed adoption of rules pertaining to the Microbusiness Finance Program.

2. The proposed new rules will read as follows:

"I. DEVELOPMENT LOAN - CRITERIA (1) The criteria used by the department to make development loans to a certified MBDC will include the criteria required for certification as an MBDC as set forth in Rule I published at page in MAR Notice No. 8-99-2, published at page 1898, issue 19, 1991 Montana Administrative Register.

(2) The MBDC must provide to the department:

(a) legally binding commitment(s) for MBDC operating income other than earned income;

(b) legally binding commitment(s) for matching funds;

(c) such updates as are requested by the department to the proposal for certification as MBDC.

(3) Development loans will be awarded pursuant to a loan agreement between the department and the MBDC.

(4) The department will consider the following in determining the amount of a development loan awarded to MBDC:

(a) sources and sufficiency of operating income of the MBDC;

(b) market potential of the MBDC;

(c) expertise and, where applicable, performance of the MBDC in management of revolving loan fund; and

(d) geographic and rural-to-urban balance in distribution of program funds."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

"II. DEVELOPMENT LOAN - APPLICATION PROCESS (1) The MBDC may apply for a development loan by submitting an application to the department on a form provided by the department. The application shall contain:

(a) a description of the purpose for which the loan will be used;

(b) a description of all outstanding obligations of the MBDC;

(c) a copy of the most recent audit including financial statement of the MBDC;

(d) any other information deemed necessary by the department to evaluate the application in accordance with the rules.

(2) The department will review the application to determine if the application is complete under new rule I above. The department may, in its discretion, request the MBDC to provide additional information relevant to the evaluation of the applications.

(3) Loan awards will be made at the sole discretion of the department."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

"III. DEVELOPMENT LOAN - INTEREST (1) A range of allowable development loan interest rates will be set by the department annually based on a forecast of administrative expenses and income for the program.

(2) The interest rate for each development loan will be set by the department, within the established range of interest rates current at the time the loan agreement is negotiated.

(3) The interest rate set in the development loan agreement may not be increased during the term of the loan, but may be reduced at the department's discretion. The rate of interest may not be less than 3% a year."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

"IV. DEVELOPMENT LOAN - TERMS (1) Development loans shall be interest-only loans, renewable at intervals of no more than four years.

(2) The loan agreement will specify a schedule for the MBDC to make microbusiness loans with the proceeds of the development loan.

(3) The loan agreement will specify levels of classroom training, pre-loan and post-loan consulting by the MBDC.

(4) The loan agreement will specify reporting obligations of the MBDC to the department, including scheduling and format of reporting, on reporting topics including but not limited to the following:

(a) financial management;

(b) job creation;

(c) unemployment and public assistance cost reduction; and

(d) demographic distribution of lending.

(5) The loan agreement will require fidelity bonding of all MBDC employees having access to development loan funds."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-407, MCA

"V. DEVELOPMENT LOAN - MATCHING CONTRIBUTIONS AND COLLATERAL (1) Matching funds must be provided in cash. Leverage provided by financial institutions committing to make microbusiness loans in consequence of a guarantee fund established with the development loan funds does not constitute cash match.

(2) The development loan agreement between the department and an MBDC must specify account(s), or type of account(s), into which the full amount of the cash match must be deposited before the development loan may be disbursed to the MBDC, except that, when the MBDC presents a legally binding commitment for cash match from a federal agency contingent only upon disbursement of the development loan, the development loan may be disbursed prior to deposit of that committee federal portion of the cash match.

(3) In order to assist an MBDC in obtaining match from other sources, the department may provide a legally binding commitment to an MBDC to award a development loan, contingent on receipt and deposit of cash match as specified in the loan agreement. Such a commitment must have an expiration date; the duration of such commitments shall be no longer than one calendar quarter, so that commitments to MBDCs without matching cash on hand do not unreasonably delay lending to MBDCs with cash match ready and available.

(4) Cash balances of development loan proceeds and matching funds, including guarantee funds and all other funds not loaned out in microbusiness loans, must be:

(a) placed in demand, savings or time deposits with solvent banks, building and loan associations, savings and loan associations or credit unions located in the state, provided that no such deposit may be made in excess of 150% of the amount insured by the federal deposit insurance corporation, federal savings and loan insurance corporation or national credit union administration; or

(b) invested in one or more of the kinds of securities listed in 17-6-103, MCA.

(5) So long as any development loan balance is outstanding between the department and an MBDC, cash match from the MBDC must be maintained in the form of microbusiness loans made from the revolving loan fund, or in the form of such deposits and investments as are specified in paragraph (4) above, in at least the ratio of \$1 in cash match to \$3 in development loan balance outstanding. Reduction of match below this minimum ratio will be grounds for declaring an MBDC to be in default of the development loan agreement between the department and the MBDC.

(6) Match held by MBDCs in cash, cash deposits or investments other than microbusiness loans or guarantee funds must be pledged as collateral against the development loan.

(7) An MBDC must provide the department with a first lien against the full amount of all microbusiness loans made from development loan and matching funds.

(8) In the case that proceeds from a development loan are used to establish a revolving loan fund, from which loans are made directly to microbusinesses, cash match must be deposited, invested and lent together with the development loan proceeds, and must be used for only those purposes for which the development loan fund proceeds are used, as defined in 17-6-407(5), MCA.

(9) In the case that an MBDC establishes both a revolving loan fund and a guarantee fund, cash match must be allocated between the guarantee fund and the revolving loan

funding the same proportion that development loan proceeds are allocated between the guarantee fund and the revolving loan fund.

(10) In the case that proceeds from a development loan are used in whole or in part to establish a guarantee fund, with which the MBDC guarantees loans made by financial institutions to microbusinesses, the following additional requirements apply:

(a) the guarantee agreement between the financial institution and the MBDC must be approved by the department prior to the placement of development loan proceeds in a guarantee fund;

(b) the MBDC must provide the department with a first lien against receivables of the MBDC generated by assignment by the financial institution to the MBDC, or purchase from the financial institution by the MBDC, of microbusiness loans;

(c) the MBDC must provide the department with no less than a second lien against the guarantee fund established with development loan proceeds;

(d) in addition,

(i) the MBDC must maintain a reserve fund of matching cash deposited or invested as specified in paragraph (4) above, pledged as collateral against the development loan in the amount of at least \$1 for every \$3 of development loan proceeds allocated to the guarantee fund;

(A) a letter of credit provided to the department as collateral for the development loan by the financial institution or institutions having a guarantee agreement with the MBDC, may at the department's discretion be substituted in place of up to \$40,000 of the reserve fund required under (i) above.

(ii) alternative collateral arrangements may be substituted for the requirements under (d)(i) and (d)(i)(A) above, if, in the department's sole judgment and discretion, these arrangements provide security for the development loan funds that is equivalent or superior to that required above."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

"VI DEVELOPMENT LOAN - RENEWAL REQUIREMENTS (1) The department will notify MBDCs in writing at least six months prior to expiration of a loan agreement of its intent to renew and/or require repayment of a development loan.

(2) The department may renew the four-year interest-only term of the development loan, or may require the repayment of the loan in full or in part.

(3) The department will consider the criteria for certification of the MBDC and development loan approval, and the MBDC's record of performance on the loan agreement, in determining if a development loan is to be renewed and/or repaid in full or in part."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

"VII DEVELOPMENT LOAN - NON-RENEWAL (1) Should the department choose not to renew a development loan, the term of the repayment schedule will not extend beyond the term of

repayment of the MBDC's longest outstanding microbusiness loan.

(2) The interest rate for repayment of an existing development loan will be set through negotiation by the department and the MBDC, but in no case will the interest be higher than the current interest rate for development loans as set forth in III above."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

"VIII. DEVELOPMENT LOANS - NONCOMPLIANCE AND DEFAULT

(1) Criteria for determining noncompliance and default and provisions for notice and remedy must be defined in the loan agreement.

(2) An MBDC may not be declared in default until at least 60 days from the postmark date of the first notice of noncompliance with the loan agreement.

(3) The department may declare an MBDC in default in the event of failure to correct any noncompliance with the loan agreement, or to initiate a mutually acceptable course of action, within 60 days from the postmark date of the first notice of noncompliance."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

"IX. ADMINISTRATIVE ACCOUNT (1) The microbusiness administrative account into which interest from development loans and other program income is deposited may accumulate an operating reserve equivalent to three months of program administrative expenses.

(2) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-407, MCA

"X. MICROBUSINESS LOANS - LENDING OUTSIDE THE REGION

(1) Up to 10% of the loans made or guaranteed by an MBDC may be to clients outside the MBDC's service region. An MBDC may exceed this limit only after entering into written agreement(s) to do so with the MBDC(s) certified in the other service region(s) in which loans are outstanding."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

"XI. MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS

(1) Microbusiness loan applicants will be required to certify in the manner specified and on forms provided by the department to the MBDCs, that the applicant is an eligible borrower from the program as defined in 17-6-403 and 17-6-407(5) and (6), MCA.

(2) Full-time equivalent employment of the microbusiness loan applicant will be measured for the purpose of determining eligibility on the basis of the payroll period immediately prior to the loan application date.

(3) Each MBDC will adopt and make known to microbusiness loan applicants a process for appeal in the event of loan

denial or award of less than the amount requested in the microbusiness loan application.

(4) The dollar value of all microbusiness loans having repayment terms of more than five years may not exceed 15% of the total dollar value of all microbusiness loans made by an MBDC.

(5) The department will survey a selection of Montana financial institutions no less often than semiannually to determine a benchmark market interest rate. The department will set minimum and maximum annual percentage interest rate limits for microbusiness loans based on that benchmark. Interest rates charged to microbusinesses by MBDCs must fall within the maximum and minimum rates set by the department for the period.

(6) The department will establish guidelines for calculating annual percentage rates for the purpose of complying with microbusiness interest rate limits."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

REASON: These proposed rules are necessary to implement House Bill 477 (the Microbusiness Development Act) as mandated by the 1991 Legislature.

3. Interested persons may present their views and comments either orally or in writing at the hearing. Written comments may also be submitted to the Business Development Division, 1424 - 9th Avenue, Helena, Montana 59620, no later than December 12, 1991.

4. Annie M. Bartos, attorney, has been designated to preside over and conduct the hearing.

BUSINESS DEVELOPMENT DIVISION

BY:

Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 4, 1991.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Teacher	)	THE PROPOSED AMENDMENT OF ARM
Certification	)	10.57.102, 10.57.401,
	)	10.57.402, 10.57.403
	)	AND 10.57.404, THE
	)	ADOPTION OF NEW RULES
	)	PERTAINING TO RENEWAL
	)	REQUIREMENTS AND THE REPEAL
	)	OF ARM 10.57.206 and 10.57.207

TO: All Interested Persons

1. On December 6, 1991, at 9:00 a.m. or as soon thereafter as it may be heard, a public hearing will be held in the Lewis and Clark Library, 120 S. Last Chance Gulch, in the matter of the proposed amendment to ARM 10.57.102, Definitions, 10.57.401 Class 1 Professional Teaching Certificate, 10.57.402 Class 3 Administrative Certificate, 10.57.404 Vocational Certificate and proposed adoption of new rules pertaining to renewal requirements and the repeal of ARM 10.57.206 Equivalency and 10.57.207 Extension and Inservice credits.

2. The rules as proposed to be amended, adopted and repealed are as follows:

10.57.102 DEFINITIONS (1) through (7) remain the same.

(8) "College Credit" means completion of a college course from an approved college. For the purpose of certificate renewal, college credits are counted in the following manner: one (1) quarter credit is equal to ten (10) clock hours, or one (1) semester credit is equal to fifteen (15) clock hours.

(8) through (10)(b) remain the same but will be renumbered.

(12) "Renewal Unit" means a quantitative recognition of a certificate holder's participation in activities designed to supplement, enhance, and/or upgrade their professional skills or knowledge base (see ARM 10.57.215). The activity must be:

(a) a planned and structured experience,

(b) of benefit to the certificate holder's professional relationships, and

(c) an exposure to a new idea or skill or an extension of an existing idea or skill.

(13) "Mentorship supervision" means support and assistance provided by the mentor to an intern/beginning teacher for one full school year.

(14) "Organized curriculum development" means activities sanctioned by a school district for the purposes of planning and assessing curriculum.

(15) "Self-directed study" means individually generated activities designed to meet the definition of a renewal unit.

(11) through (14) remain the same but will be renumbered.

~~(15) Credits compatible with academic course work-~~

~~(a) The following will not be counted:~~

~~(i) Continuing education units as opposed to continuing education credits;~~

~~(ii) Conferences that are statewide and part of the regular job;~~

~~(iii) The business meeting portion of professional conferences;~~

~~(b) Pre and post conference workshops are acceptable of approved by the office of public instruction through the equivalency guidelines (see ARM 10-57-106);~~

(16) through (18) will remain the same but will be renumbered.

~~(19) Equivalency means an experience that strengthens the ability of a person to teach or to administer, which may be substituted for traditional academic work or teaching experience;~~

~~(20) (23) A certificate is considered lapsed if:~~

~~(a) The holder has not earned the required number of renewal credits or the equivalent units during the term of the certificate (credit units earned during summer school through August 31 immediately following the expiration date of a certificate also will be considered for renewal);~~

~~(b) and (c) remain the same.~~

~~(d) "Workshop" means a concentrated presentation of a single topic for not less than one (1) hour.~~

(21) will remain the same but be renumbered (24).

AUTH: Sec. 20-4-102

IMP: Sec. 20-4-106

The rules as proposed to be repealed are as follows 10.57.206 EQUIVALENCY and 10.57.207 CORRESPONDENCE, EXTENSION AND INSERVICE CREDITS and can be found on pages 10-832.1 through 10-837.

#### "I. RENEWAL REQUIREMENTS

(1) Sixty units (60) of renewal activities will be required for renewal of Class 1, 2, 3 and 4. For Class 2 and 4 certificate holders, at least forty (40) renewal units must be obtained through college credits (does not pertain to Class 4A with master's degree).

(2) Renewal activities used to renew all certificates must be:

(a) a planned and structured experience,  
(b) of benefit to the certificate holder's professional relationships, and

(c) an exposure to a new idea or skill or an extension of an existing idea or skill.

(3) Unless limited by restrictions in (4), participation in renewal activities are equivalent to the following renewal units:

- (a) 1 renewal unit
    - = hour of attendance at a workshop
    - = 2 hours of self-directed study
    - = 2 hours of organized curriculum development
  - (b) 2 renewal units
    - = 1 hour of presentation at a workshop
  - (c) 10 renewal units
    - = 1 quarter college credit
    - = 1 full school year of intern/beginning teacher supervision
  - (d) 15 renewal units
    - = 1 semester college credit
- (4) The following restrictions on renewal activities apply:
- (a) A renewal unit will be available only in whole units.
  - (b) Renewal units may only be given once per subject/topic for presentations at workshops.
  - (c) Only 5 renewal units per year may be given for organized curriculum development.
  - (d) Only 15 renewal units may be given per topic for self-directed study.
  - (e) Mentorship supervision experiences of less than one (1) full school year will not be granted."

AUTH: Sec. 20-4-102

IMP: Sec. 20-4-108

## "II. RENEWAL ACTIVITY APPROVAL

(1) To receive approval for a renewal activity, a request from an educational organization or agency, or from an individual applying for self-directed study, must be submitted to the office of public instruction at least 30 days prior to the start of the activity. Courses from accredited college programs do not require approval as a renewal activity.

(2) All self-directed study requests must be accompanied by a statement that:

- (a) describes how verification will be made,
- (b) identifies the school official who will verify the completion of the activity and assures that the three objectives required for a renewal unit will be met, and

(c) includes the signature of the above mentioned school official.

(3) (a) If a curriculum organization has a review process established, requests for curriculum renewal activity approval in that curriculum area will be sent to that state organization for review. A recommendation for approval or denial should be returned to the certification division of the office of public instruction within 10 days of the receipt of the request. All requests not returned within that time frame will be assigned to appropriate staff members for approval.

(b) All other requests will be assigned to appropriate curriculum specialists at the office of public instruction. A recommendation for approval or denial must be returned to the certification division of the office of public instruction within 10 days of the receipt of the request.

(4) All requests for non-curriculum renewal activities will be assigned to office of public instruction staff for review. A recommendation must be returned to the certification division of the office of public instruction within 10 days of the receipt of the request.

(5) If a recommendation for denial is made, the recommending organization or staff member will provide the office of public instruction with a substantive explanation as to why the activity is denied approval.

(6) A determination for approval or denial will rest with the director of certification or a designee.

(7) Upon request of the applicant, an appeals committee will review activities not approved for renewal."

AUTH: Sec. 20-4-102 IMP: Sec.20-4-108

#### "III. APPEAL PROCESS FOR DENIAL OF RENEWAL ACTIVITY

(1) Following a request for a review of the denial of a renewal activity, the chair of the certification standards and practices advisory council will appoint an appeals committee consisting of:

(a) Two members of the certification standards and practices advisory council, and

(b) A specialist from an appropriate content area at the office of public instruction.

(2) The appeals committee will review the request and will recommend approval or denial. The committee may receive additional testimony on the merits of the activity.

(3) Denial by the appeals committee may be appealed to the board of public education."

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-108

#### "IV. RENEWAL UNIT VERIFICATION

(1) To verify the renewal units have been earned, certificate holders must submit:

(a) College transcript, or

(b) Certificate of completion, or

(c) Activity documentation form.

(2) An individual renewal unit summary sheet must accompany all applications for certificate renewal.

(3) Certificate holders not currently under contract will be treated in the same manner as a contracted certificate holder."

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-108

10.57.401 CLASS 1 PROFESSIONAL TEACHING CERTIFICATE (1) through (3) will remain the same.

(4) Renewal: Verification of one year of successful teaching experience or the equivalent. Beginning with those certificates expiring in 1995 ~~six credits~~ sixty renewal units will also be required for renewal. (See ARM 10.57.215) ~~Renewal credits consist of college credit including extension course credits and continuing education credits. Also acceptable are staff development credits, inservice training credit, and local school district professional development credit, as approved by the office of public instruction.~~

(5) Reinstatement: will remain the same.

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

10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE (1) through (2) will remain the same.

(3) Renewal: Verification of one year of successful teaching experience or the equivalent plus presentation of ~~acceptable evidence of 6 additional quarter (4 semester) credits~~ sixty (60) renewal units. Beginning with those certificates expiring in 1997, at least forty (40) of those units must be obtained through college credits.

(4) through (10) will remain the same.

AUTH: Sec. 20-4-102, 20-2-121 IMP: Sec. 20-4-106, 20-4-108

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1) through (2) will remain the same.

(3) Renewal: Verification of one year of successful experience or the equivalent in the area of endorsement. Beginning with those certificates expiring in 1992, ~~six credits~~ sixty (60) renewal units will also be required for renewal. (See ARM 10.57.215) ~~Renewal credits consist of college credit including extension course credits and continuing education credits. Also acceptable are staff development credits, inservice training credit, and local school district professional development credit, as approved by the office of public instruction. (See ARM 10.57.206).~~

(4) through (9) will remain the same

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

10.57.404 VOCATIONAL CERTIFICATE (1) through (2)(a)(ii) will remain the same.

(2)(a)(iii) This certificate is issued for five years and is renewable on completion of one year of successful teaching experience in the area of endorsement during the five-year period plus the presentation of acceptable evidence of completion of ~~six additional quarter credits in professional course work, or in technical study, or the equivalent in industrial experience as determined in consultation with the~~

teacher's--supervisor--and/or--the--superintendent--of--public instruction sixty renewal units. Beginning with those certificates expiring in 1997, at least forty (40) of those units must be obtained through college credits unless the certificate holder has a master's degree in a field related to certification.

(2)(a)(iv) through (2)(b)(v) will remain the same.

(2)(b)(vi) This certificate is issued for five years and is renewable on completion of one year of successful teaching experience in the area of endorsement during the five-year period plus the--presentation--of--acceptable--evidence--of completion of six--additional--quarter--credits--in--professional course--work--or--in--technical--study--or--the--equivalent--in industrial--experience--as--determined--in--consultation--with--the teacher's--supervisor--and/or--the--superintendent--of--public instruction sixty renewal units. At least forty (40) of those units must be obtained through college credits.

AUTH: Sec. 20-4-102

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

"V CONVERSION FROM RENEWAL CREDITS TO RENEWAL UNITS (1)

Applicants for renewal who have earned six (6) equivalency credits prior to March 1, 1992, may renew their certificates based upon having completed the renewal requirements that were in effect prior to March 1, 1992.

(2) Persons who have earned part of the required renewal credits through equivalency prior to March 1, 1992, may apply those renewal credits toward renewal. Upon application for renewal, those credits will be converted to renewal units based on the following criteria: 1 equivalency credit will equal 10 renewal units."

Auth: Sec. 20-4-102


IMP: Sec.20-4-108

3. The board is proposing the amendments, adoption and repeal of these rules because under the current rule the word "credit" is used for both the college courses and equivalent renewal activities. This has caused confusion and debate concerning the equivalent nature of these activities. In order to resolve this confusion, a clarification of the terms is needed. The proposed changes in the rule reflect the new renewal requirements which are expressed in renewal units rather than credits. Requirements for renewal are repeated in several rules to insure clarity and compliance. The guidelines will be used to judge the appropriateness of the renewal activity.

4. These rules will be effective March 1, 1992.

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 Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 16, 1991.

6. Bill Thomas, Chairperson to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearing.

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BILL THOMAS, CHAIRPERSON  
BOARD OF PUBLIC EDUCATION

BY: Wayne G Buchanan

Certified to the Secretary of State, 11/4/91.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the Matter of the Adoption	)	NOTICE OF ADOPTION
of Amendments to federal	)	OF AMENDMENTS TO
agency rules pertaining to	)	FEDERAL AGENCY RULES
motor carrier safety	)	PRESENTLY INCORPORATED
regulations.	)	BY REFERENCE IN 23.5.102,
	)	DEPARTMENT OF
	)	TRANSPORTATION
	)	AND I.C.C. RULES
	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. The Department of Justice hereby gives notice of the adoption and incorporation by reference of later amendments to the federal motor carrier safety regulations of the Department of Transportation. These regulations are presently incorporated by reference in section 23.5.102, ARM, Department of Transportation and I.C.C. Rules. The amendments proposed to be adopted are amendments to the Code of Federal Regulations, Title 49, sections 385, 385.1, 385.3, 385.11, 385.13, 385.15, 385.17, 385 appendix, 386, 386.2, 386.11, 386.14, 386.15, 386.16, 386.21-386.23, 386.22, 386.23, 386.72, 386.81, 386 appendix A, 396.25. These amendments have all occurred between January 1, 1991 and September 30, 1991. A copy of these amendments may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402.

2. The effective date for the adoption of the later amendments is December 14, 1991.

3. If the agency receives requests for a public hearing under 2-4-315, MCA, on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 8,300 persons based on the fact that 83,000 persons hold a Montana commercial driver's license.

4. The authority of the agency to make the proposed rule is based on section 44-1-1005, MCA, and the rule implements section 44-1-1005 and 61-10-141, MCA.



-2202-

By: Judy Browning  
Judy Browning  
Deputy Attorney General  
Rule Reviewer

Certified to the Secretary of State November 4, 1991.

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

In the Matter of Proposed	)	NOTICE OF PROPOSED AMENDMENT
Amendment of Rule 38.4.120	)	OF RULE REGARDING WAIVER OF
Regarding Waiver of Monies	)	MONIES DUE TO RAILROADS
Due to Railroad.	)	
	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 16, 1991 the Department of Public Service Regulation proposes to adopt the following amendment to rule 38.4.120.

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

38.4.120 WAIVER OF MONIES DUE TO RAILROAD (1) If a railroad wishes to waive collection of amounts due pursuant to suspensions under ARM 38.4.117, petitions based on damages that involve tariff errors or misconstruction, or the erroneous application of demurrage charges, when such amounts are more than ~~\$2,000.00~~ \$25,000, a petition for appropriate authority may be filed by the railroad, with the commission, in the form of a Letter of Intent to Waive Insignificant Amounts. The petition should contain the following information:

(a) through (5) No changes.

(6) If the amount to be waived is ~~\$2,000.00~~ \$25,000 or less, no petition need be filed prior to waiver of monies due. However, in the case of a waiver pursuant to ARM 38.4.117, this exemption may be invoked by the railroad only once for any person who uses the original rate during the suspension period. This exemption shall not in any way be construed as authorizing a railroad to consistently charge any person a rate for services which differs from the appropriate tariff then in effect. In any event, a statement informing the commission of the investigation and suspension docket number, or as applicable, relevant tariff information, the action taken, the date of the action and the amount of monies due that were waived shall be submitted to the commission within 30 days of the waiver. AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

3. Rationale: The Department of Public Service Regulation (Department) proposes adopting this amendment to comply with the directive of the Interstate Commerce Commission (ICC) Decision, Ex Parte No. 388 (Sub-No. 18) effective October 25, 1990. The decision granted the State of Montana, through the Public Service Commission, recertification of jurisdiction over intrastate rail rates, classifications, rules and practices through October 25, 1995. However, the ICC noted that Montana's regulations must be revised to reflect the ICC's current regulations on waiver of collection for insignificant

amounts. That amount has been raised to \$25,000 pursuant to 49 C.F.R. § 1130.2(e). Accordingly, the Department proposes this amendment to ARM 38.4.120.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Denise Peterson, Public Service Commission, 1701 Prospect Avenue, Helena, Montana 59620-2601 no later than December 13, 1991.

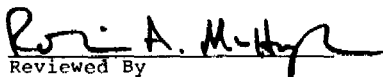
5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Denise Peterson, Public Service Commission, 1701 Prospect Avenue, Helena, Montana 59620-2601, no later than December 13, 1991.

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

7. 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.

  
HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 4, 1991.

  
Reviewed By

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE PROPOSED
of RULE I relating to )	ADOPTION OF RULE I
Extensions and Late Pay )	relating to Extensions and
Penalty )	Late Pay Penalty

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 26, 1991, the Department of Revenue proposes to adopt Rule I relating to extensions and late pay penalty.

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

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

RULE I EXTENSIONS - LATE PAY PENALTY (1) Effective with tax years beginning after December 31, 1990 a six-month extension of time to file an individual income tax return may be obtained by a taxpayer only if the following conditions are met:

(a) A properly completed Montana application for automatic extension (form EXT) is either delivered to the department or postmarked on or before the original due date of the return. The due date is April 15th for calendar year taxpayers or the 15th day of the 4th month following the close of the taxable year for fiscal year taxpayers.

(b) At the time of making the application, the taxpayer has paid either through withholding, estimated tax payments, or a combination of both, either of the following:

(i) 95% of their current year's income tax liability; or

(ii) 100% of their prior year's income tax liability.

(2) For this purpose, a taxpayer's tax liability is defined as the tax less any income tax credits (excluding the refundable elderly homeowner credit).

(3) For purposes of subsection (1) (b), in determining a taxpayer's percentage level of payment, the total of their Montana withholding tax, any estimated payments plus any payment made with the application for extension are divided by the taxpayer's total tax liability.

Example: A taxpayer has a current year tax liability of \$10,000 before any income tax credits. The taxpayer has an income tax credit of \$600, withholding of \$4,000, an estimated tax payment of \$2,000 and a elderly homeowner credit of \$400. The taxpayer's prior year tax liability after credits was \$12,000. If the taxpayer requests an extension, the amount of payment required is calculated as follows:

	PREVIOUS YEAR	CURRENT YEAR
Total tax liability before credits	= \$12,000	\$10,000
Less income tax credits	= -0-	(600)
Total tax liability	= \$12,000	\$ 9,400
	X 100%	X 95%
Amount required to be paid	= \$12,000	\$ 8,930

LESS CURRENT YEAR PAYMENTS:

Montana withholding	= \$ 4,000	\$ 4,000
Estimated tax payments	= 2,000	2,000
Elderly homeowner credit	= 400	400
Total payments	\$ 6,400	\$ 6,400

Amounts required to meet threshold figures	\$ 5,600	\$ 2,530
--	----------	----------

After subtracting the withholding, estimated tax and elderly homeowner credit, the amount of \$2,530 (the lesser of the two) is the amount required to be paid in order to receive an extension.

(4) If a taxpayer obtains an extension and does not meet either of the required payment thresholds in subsection (1) (b), a late pay penalty of 10% is imposed on the underpayment. Late file penalties will not apply.

(5) The underpayment is calculated as the difference between the lesser of:

(a) 95% of the current year's income tax liability after credits, less the amount of payments from withholding, estimated tax, and payments with the extension; or

(b) 100% of the prior year's income tax liability after credits, less the amount of payments from withholding, estimated tax, and payments with the extension.

(6) In the case where a taxpayer is single the prior year and married the current year and wishes to file a married filing joint return, they are required to pay either 95% of the current year's income tax liability or 100% of the combined tax liabilities of both taxpayer's prior year single return.

(7) In the case where a taxpayer is married the prior year and single the current year, they are required to pay either 95% of their current year's income tax liability or 50% of the tax liability of the taxpayer's prior year return.

(8) Interest is charged at 9% per annum or 3/4% per month on the underpayment of taxes from the original due date of the return.

(9) An extension of time to file does not extend the time to pay. When a return is filed before the extension date and payment is not made, the return is subject to late pay penalties.

(10) Taxpayers who are first time filers are required to pay 95% of their current year's tax.

AUTH: 15-30-305 MCA

IMP: 15-30-144 MCA

3. Rule I is proposed to be adopted because the intent of HB 959 is to have the majority of withholding and estimated tax paid by April 15 following the taxpayers tax year. The rule establishes what a taxpayer whose filing status changes from one year to another must pay and how the penalty for underpayment is calculated.

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

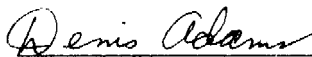
Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than December 13, 1991.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than December 13, 1991.

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

  
CLEO ANDERSON  
Rule Reviewer

  
DENIS ADAMS  
Director of Revenue

Certified to Secretary of State November 4, 1991

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION ) NOTICE OF THE PROPOSED ADOPTION  
of NEW RULE I relating to ) of NEW RULE I relating to  
delinquent tax accounts and ) delinquent tax accounts and  
non-collection actions ) non-collection actions

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 26, 1991, the Department of Revenue proposes to adopt new Rule I relating to delinquent tax accounts and non-collection actions.

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

RULE I DEPARTMENT DETERMINATION THAT COLLECTION OF DELINQUENT ACCOUNTS IS NOT COST EFFECTIVE AND SUBSEQUENT ACCOUNT WRITE OFF (1) The department may write off collection of any tax penalty or interest, when it is determined that the anticipated cost of collection is equal to, or exceeds the projected amount of recovery. The department will base the determination upon a "case by case" review of accounts proposed for write-off.

(2) Decision by the department to write off collection of an obligation does not constitute satisfaction of it and it remains due and payable, but the department will incur no further expense attempting collection and will remove the obligation from active department monitoring and enforcement procedures. AUTH: 15-1-201 MCA; IMP: 15-1-207 MCA.

3. Rule I is proposed to be adopted because the statement of intent in Senate Bill 110 contemplates rule-making to explicitly state the criteria for which a debt may be written off but not forgiven.

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

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

no later than December 13, 1991.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than December 13, 1991.

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



CLEO ANDERSON  
Rule Reviewer



DENIS ADAMS  
Director of Revenue

Certified to Secretary of State November 4, 1991



BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 14, 1991, the office of the Secretary of State proposes to amend ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419. FILING, COMPILING, PRINTER PICKUP AND  
PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER

(1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

1991-92 Schedule

<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
January 76	January 87	January 98	January 1716
January 2117	January 2221	January 2322	January 3130
February 43	February 54	February 65	February 1413
February 1918	February 2019	February 2120	February 2827
March 42	March 53	March 64	March 1412
March 1816	March 1917	March 2018	March 2826
April 16	April 27	April 38	April 1116
April 1520	April 1621	April 1722	April 2530
May 64	May 75	May 86	May 1614
May 2018	May 2119	May 2220	May 3028
June 31	June 42	June 53	June 1311
June 1715	June 1816	June 1917	June 2725
July 16	July 27	July 38	July 1116
July 1520	July 1621	July 1722	July 2530
August 53	August 64	August 75	August 1513
August 1917	August 2018	August 2119	August 2927
<del>September 3</del>			
August 31	September 41	September 52	September 1210
September 1614	September 1715	September 1816	September 2624
October 75	October 86	October 97	October 1715
October 2119	October 2220	October 2321	October 3129

<del>November 4</del>			
<del>October 30</del>	November 52	November 64	November 1412
November 1816	November 1917	November 2018	November 2725
<del>December 2</del>			
November 30	December 31	December 42	December 1210
December 1614	December 1715	December 1816	December 2624

(3) remains the same.

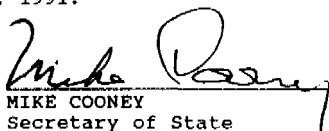
AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1992.

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

Kathy Lubke, Chief  
Administrative Rules Bureau  
Secretary of State's Office  
Room 225, Capitol Building  
Helena, MT 59620

no later than December 12, 1991.

  
MIKE COONEY  
Secretary of State

  
GARTH JACOBSON  
Rule Reviewer

Dated this 4th day of November, 1991.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rules	)	THE PROPOSED AMENDMENT OF
46.12.4002, 46.12.4004 and	)	RULES 46.12.4002,
46.12.4006 pertaining to	)	46.12.4004 AND 46.12.4006
restricting inpatient	)	PERTAINING TO RESTRICTING
psychiatric services	)	INPATIENT PSYCHIATRIC
	)	SERVICES

TO: All Interested Persons

1. On December 4, 1991, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.4002, 46.12.4004 and 46.12.4006 pertaining to restricting inpatient psychiatric services.

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

46.12.4002 GROUPS COVERED, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsections (1) through (1)(b) remain the same.

~~(c) Individuals under age 21 receiving active treatment as inpatients in psychiatric facilities or programs.~~  
Subsection (2) remains the same.

(a) individuals described in subsections (1)(b) and ~~(1)(c)~~ who are ineligible for coverage as categorically needy because of excess income.

AUTH, Sec. 53-6-113 MCA; IMP, 53-6-131 MCA;

46.12.4004 NON-FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsection (1) remains the same.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, ~~or receiving treatment in psychiatric facilities or programs,~~ the nonfinancial requirements for medicaid under this subchapter, whether as categorically needy or medically needy, consist of the age requirement and applicable service requirements.

AUTH, Sec. 53-6-113 MCA; IMP, 53-6-131 MCA;

46.12.4006 FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsection (1) remains the same.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, ~~or receiving treatment in psychiatric facilities or programs~~, the financial requirements for medicaid under this subchapter as categorically needy are the AFDC financial requirements which are set forth in ARM 46.10.401 through 406 and 46.10.505 through 514. These will be used to determine whether:

Subsections (2)(a) through (2)(c)(ii) remain the same.

(3) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, ~~or receiving treatment in psychiatric facilities or programs~~ who are ineligible under subsection (2) because of excess income, the financial requirements for medicaid under this subchapter as medically needy are the medically needy financial requirements for noninstitutionalized AFDC-related families and children which are set forth in subchapter 38. The financial provisions of this subchapter which apply to individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3) apply identically to the above described individuals under 21.

AUTH, Sec. 53-6-113 MCA; IMP, 53-6-131 MCA;

3. The department has the authority pursuant to sections 53-6-113, and 53-6-131, MCA, to adopt rules governing eligibility for the Montana Medicaid program. In addition, section 53-6-101, MCA provides the department with authority to determine what federally defined optional services will be provided in Montana. The proposed rules are necessary to effectuate these statutory provisions. These proposed rules are necessary to make changes to current eligibility requirements for those persons under 21 years of age receiving inpatient psychiatric treatment. The changes will provide necessary cost savings in the Medicaid program as required by Executive Order 2891.

The department has determined that it is more equitable to apply the same rules regarding eligibility to individuals under age 21 receiving inpatient psychiatric treatment as apply to other applicants for Medicaid. Specifically, the department has determined that it is appropriate to consider the income and resources of the individual's parents. The proposed amendments are necessary to make eligibility rules for persons under age 21 receiving inpatient psychiatric treatment consistent with generally applicable rules of Medicaid eligibility.

Amendments to ARM 46.12.4002, 46.12.4004 and 46.12.4006 will require inclusion of parental income when determining eligibility for persons under age 21 who are receiving inpatient treatment in a psychiatric facility. The amendments to eligibility in this area will bring this aspect of the program into accord with other areas of eligibility for Medicaid services. Thus, only persons who meet the usual eligibility requirements for AFDC-related Medicaid, such as deprivation of parental support, and income and resource limits when parental income and resources are counted will be eligible. This more restrictive eligibility requirement will result in a savings to the Medicaid program.

Although the proposed rules will make the general eligibility requirements for AFDC-related Medicaid applicable to persons under 21 years of age receiving inpatient psychiatric treatment, there are certain cases in which parental income and resources are not necessarily counted nor is deprivation of parental support required to qualify. Children born on or after October 1, 1983, may qualify for AFDC-related Medicaid coverage as "Ribicoff" children even if they are living with both parents and are not deprived of parental support. Parental income and resources are considered in determining eligibility for a "Ribicoff" child if the child is living with the parent or parents. (Under the proposed rule, parental income and resources will be counted if the child was living with the parent or parents immediately prior to placement in a residential treatment facility.) If the child is not living with the parent only parental income actually contributed to the child is counted. The child's own income and resources are counted regardless of where or with whom the child resides.

Parental income and resources are also not counted in determining the eligibility of a child in foster care unless it is actually contributed, nor does deprivation have to be shown by a child in foster care. The income and resources of the child in foster care are counted. Thus the usual requirements of deprivation of parental support and inclusion of parental income and resources will not always apply to persons under 21 receiving inpatient psychiatric treatment who are in foster care or can qualify as a "Ribicoff" child.

4. 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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than December 12, 1991.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

Russell E. Carter for  
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 5, 1991.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF THE AMENDMENT
of 2.43.404, 2.43.425, 2.43.430, )	AND ADOPTION OF RULES
2.43.432, 2.43.505, 2.43.506, and )	RELATING TO MONTANA'S
the adoption of new rules relating )	RETIREMENT SYSTEMS
to purchasing service credits, )	
election of coverage under new PERS )	
disability retirement provisions, )	
and calculation and payment of sup- )	
plemental retirement benefits for )	
retired municipal police officers. )	

TO: All Interested Persons.

1. On September 12, 1991, the Public Employees' Retirement Board published notice of a public hearing on the proposed amendment and adoption of the above rules concerning Montana's retirement systems in the Montana Administrative Register, issue number 17, starting at page 1604 and inclusive of page 1614.

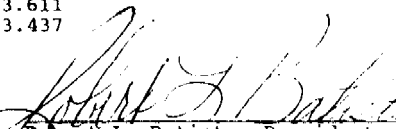
2. At 9:15 am on October 4, 1991 a Public Hearing was conducted pursuant to the September 12, 1991 notice. No oral testimony or written comments were received at this hearing.

3. Written testimony was received from the Public Employees' Retirement Division attesting to the need for the rules as proposed. No other written or oral comments were received by the division.

4. The agency has amended and adopted the rules as proposed.

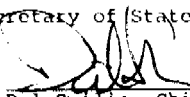
5. The new rules which have been adopted will be numbered as follows:

RULE I	ARM	2.43.433
RULE II	ARM	2.43.434
RULE III	ARM	2.43.435
RULE IV	ARM	2.43.436
RULE V	ARM	2.43.507
RULE VI	ARM	2.43.611
RULE VII	ARM	2.43.437

By:   
Robert L. Batista, President  
Public Employees' Retirement Board

Certified to the Secretary of State on November 4, 1991.

Reviewed by:


  
Dal Smilic, Chief Legal Counsel

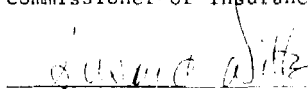
BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF THE
repeal of ARM 6.6.103 )	REPEAL OF RULE
)	
)	

TO: All Interested Persons

1. On September 26, 1991, the State Auditor and Commissioner of Insurance published notice of a proposed repeal of ARM 6.6.103 concerning EXAMINATIONS--WAITING PERIODS BEFORE RE-EXAMINATION at page 1785 of the 1991 Montana Administrative Register, issue number 18.
2. The agency has repealed rule 6.6.103, found on page 6 95 of the Administrative Rules of Montana.
3. No comments or testimony were received.

  
Andrea "Andy" Bennett  
State Auditor and  
Commissioner of Insurance

  
Susan C. Witte  
Rule Reviewer

Certified to the Secretary of State this 4th day of  
November, 1991.



BEFORE THE COAL BOARD  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

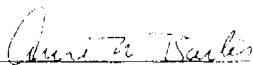
In the matter of the adoption ) NOTICE OF ADOPTION OF NEW  
of new rules for the implemen- ) RULE I (8.101.202) INCOR-  
tation of the Montana Environ- ) PORATION BY REFERENCE OF  
mental Policy Act ) RULES FOR IMPLEMENTING MEPA  
) AND RULE II (8.101.203)  
) CATEGORICAL EXCLUSIONS FROM  
) ENVIRONMENTAL REVIEW PROCESS

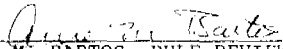
TO: All Interested Persons:

1. On August 15, 1991, the Coal Board published a notice of proposed adoption of the above-stated rules at page 1381, 1991 Montana Administrative Register, issue number 15.
2. The Board has adopted the rules exactly as proposed.
3. No comments or testimony were received.

COAL BOARD  
G.C. (JERRY) FEDA, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 4, 1991.

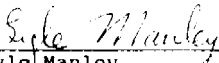
BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of Rules 18.8.509, 18.8.510A,	)	RULES 18.8.509, 18.8.510A,
18.8.510B, 18.8.511A, 18.8.514 and	)	18.8.510B,
18.8.515 regarding overdimensional	)	18.8.511A, 18.8.514,
vehicles and 18.8.1401 regarding	)	and 18.8.515 REGARDING
qualifications and training for	)	OVERDIMENSIONAL LOADS
motor carrier services division	)	AND 18.8.1401 REGARDING
personnel as peace officers.	)	PEACE OFFICERS.

To All Interested Persons:

1. On August 15, 1991, the Department of Transportation published a notice at page 1403 of the Montana Administrative Register, No. 15, to amend Chapter 8, Motor Carrier Services Division.
2. The department has amended the rules as proposed.
3. Oral and written comments were received from proponent Stuart Doggett representing Montana Manufactured Housing and Recreational Vehicle Association. No opposing comments were received.

DEPARTMENT OF TRANSPORTATION

  
\_\_\_\_\_  
Lyle Manley  
Rule Reviewer

By:   
\_\_\_\_\_  
John Rothwell, Director

Certified to the Secretary of State October 29, 1991

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT
of ARM 42.31.501 and 42.31. )	of ARM 42.31.501 and
510 relating to telephone )	42.31.510 relating to
license tax )	telephone license tax

TO: All Interested Persons:

1. On September 12, 1991 the Department published notice of the proposed amendment of ARM 42.31.501 and 42.31.510 relating to telephone license tax at page 1684 of the 1991 Montana Administrative Register, issue no. 17.

2. As a result of the comments received the Department has determined additional amendments are required to ARM 42.31.501 which are as follows:

42.31.501 DEFINITIONS (1) The term "gross income" means all the gross operating income derived from intrastate telephone business without allowance for expenses and deductions. Gross operating income includes, but is not limited to, local revenues, private line revenues, ~~access revenues~~ and long distance service revenues. Gross income does not include CARRIER ACCESS REVENUES OR REVENUE FROM THE SALE OF WHOLESALE SERVICES AS DESCRIBED IN 15-53-101(2)(b), MCA OR non-operating income or uncollectible accounts actually written off during the year provided recoveries of uncollectible accounts are included in gross income in the year of recovery.

(2) through (5) remain the same.

(6) and (7) remain as proposed.

~~(8) Interexchange carrier does not provide access lines to the public but provides access service to local exchange companies in between the origination and termination of telecommunications.~~ THE TERM "INTEREXCHANGE CARRIER" MEANS A TELECOMMUNICATIONS COMPANY THAT PROVIDES CUSTOMERS VOICE OR DATA TRANSMISSION SERVICE BEYOND THE TOLL-FREE CALLING AREA OF A LOCAL EXCHANGE COMPANY BY MEANS OF OWNED OR LEASED FACILITIES, OR ANY COMBINATION THEREOF. THE TERM MAY INCLUDE A LOCAL EXCHANGE COMPANY WHICH, IN ADDITION TO PROVIDING TELEPHONE ACCESS LINES TO THE GENERAL PUBLIC AND CARRIER ACCESS SERVICE, ALSO PROVIDES LONG DISTANCE OR MESSAGE TOLL SERVICES. AUTH: Sec. 15-53-104 MCA; IMP, Secs. 15-53-101, 15-53-104, and 15-53-111 MCA.

3. Written comments received are summarized as follows along with the response of the Department:

COMMENT: Montana Telephone Association, AT&T, U.S. West Communications, and Northwestern Telephone Systems, Inc., dba PTI Communications addressed the proposed definition of

interexchange carrier.

RESPONSE: The proposed definition was taken from the law as referenced in 15-19-302, MCA. However, comments by industry indicate that clarification is required. The proposed rules have been amended incorporating the suggested change to the definition of interexchange carrier. The terms interexchange carrier and local exchange carrier were reversed in the remaining portion of (8). To clarify the matter the rule has been amended to reflect the correction and the suggested language proposed by industry.


COMMENT: Northwestern Telephone Systems, Inc. dba PTI Communications addressed the inclusion of access services in the definition of gross income.

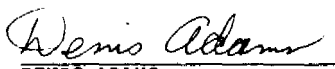
RESPONSE: Access service was exempted by the legislature. ARM 42.31.501(1) has been amended to reflect the exclusion.

COMMENT: Northwestern Telephone Systems, Inc. dba PTI Communications and the Montana Telephone Association suggested that language be included in the rules which either references the exemption of whole services under 15-53-101(2)(b), MCA, or specifies the exemption of wholesale services.

RESPONSE: To avoid confusion, the rules have been amended to include wholesale services under 15-23-101(2)(b), MCA, as an exclusion from the definition of gross income.

4. The Department has adopted ARM 42.31.510 as proposed and the Department has adopted ARM 42.31.501 as proposed with the additional amendments shown above.

  
CLEO ANDERSON  
Rule Reviewer

  
DENIS ADAMS  
Director of Revenue

Certified to Secretary of State November 4, 1991

VOLUME NO. 44

OPINION NO. 21

CITIES AND TOWNS - Authority of city judge to hold office as trustee of community college district;  
COMMUNITY COLLEGES - Authority of city judge to hold office as trustee of community college district;  
COURTS, CITY - Authority of city judge to hold office as trustee of community college district;  
JUDGES - Authority of city judge to hold office as trustee of community college district;  
PUBLIC OFFICERS - Authority of city judge to hold office as trustee of community college district;  
MONTANA CODE ANNOTATED - Title 20, chapter 15; sections 1-1-202(2), 3-1-101(6), 3-1-607, 3-1-608;  
MONTANA CONSTITUTION - Article VII, section 10.

HELD: A city judge is prohibited by Article VII, section 10, of the Montana Constitution from holding office as an elected trustee of a community college district.

October 22, 1991

Charles W. Jardine  
Miles City Attorney  
P.O. Box 532  
Miles City MT 59301

Dear Mr. Jardine:

You have requested my opinion on the following question:

Must a person appointed city judge resign his position as trustee on the board of trustees for a community college?

The answer to your inquiry turns on the meaning of Article VII, section 10, of the Montana Constitution, which provides:

**Forfeiture of judicial position.** Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

When construing a provision of the constitution, the same rules used in statutory construction are applied. Keller v. Smith, 170 Mont. 399, 553 P.2d 1002, 1006 (1976). In either case, the intent of the framers is controlling. Id. at 405. The rules of statutory construction require that the language of the constitution be given its plain and ordinary meaning. Rierson v. State, 188 Mont. 522, 614 P.2d 1020, 1023, on reh'g, 622 P.2d

195 (1980). The function of statutory construction is "simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." § 1-2-101, MCA.

Section 10 of Article VII was "designed to prevent judgeships being used as stepping stones for the fulfillment of political ambition." I Mont. Const. Conv. 522 (1971); IV Mont. Const. Conv. 1120 (1971). As originally drafted in the majority report of the Judiciary Committee, the provision stated: "No justice of the supreme court or district judge shall hold any other public office, except that he may be a member of the Judicial Standards Commission, while he remains in the office to which he has been elected or appointed." I Mont. Const. Conv. 492 (1971). The minority proposal included a sentence in the section pertaining to qualifications and limitations of Supreme Court justices and district judges which stated: "Filing for another elective public office results in forfeiture of judicial position." I Mont. Const. Conv. at 512 (1971).

The provision later was amended to allow judges to seek other judicial positions without forfeiting their offices, and there is some indication that the delegates intended the forfeiture provision to apply to judges of limited jurisdiction courts. When the amendment was added allowing judges to hold other judicial office, discussion among the delegates included mention of justices of the peace not having to forfeit their offices if they chose to run for another judicial position. IV Mont. Const. Conv. 1149 (1971).

The result of the debate was section 10 of Article VII, which refers to "a/ny holder of a judicial position." [Emphasis added.] The Montana Supreme Court has stated that this provision "applies to all judges in this state." Committee for an Effective Judiciary v. State, 209 Mont. 105, 679 P.2d 1223, 1227 (1984) (emphasis in original).

State law defines "judicial officers" as "justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges." § 1-1-202(2), MCA. "Courts of justice" also include the city courts. § 3-1-101(6), MCA. However, the statutory provisions implementing Article VII, section 10, are limited to the forfeiture of office by supreme court justices and district judges; there is no mention of justices of the peace, municipal judges, or city judges. §§ 3-1-607, 3-1-608, MCA.

Given the broad language of Article VII, section 10, and in view of the Supreme Court's holding that it applies to all judges, I conclude that the constitutional provision must be construed to include city judges, notwithstanding the lack of parallel statutory language.

Having so concluded, I next turn to the issue whether the position of trustee of a community college is an "elective public office" within the meaning of Article VII, section 10, of the Montana Constitution. "A public office has been defined as 'a public trust or agency created for the benefit of the people.'" State ex rel. Hollibaugh v. State Fish and Game Commission, 139 Mont. 384, 365 P.2d 942, 948 (1961). Public office involves "a delegation ... of some of the sovereign functions of government, to be exercised ... for the benefit of the public." State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 P. 411, 413 (1927). Characteristics of public office may include, among others, the taking of an official oath, a definite term of service, and prescription of duties by law. *Id.*, 257 P. at 414.

It is my understanding that, prior to becoming city judge, the city judge was elected to the position of trustee in accordance with the provisions of Title 20, chapter 15, MCA, which govern community college districts. Under section 20-15-204, MCA, trustees are ordinarily elected at large and serve terms of three years. Once elected, the trustees are qualified by taking the oath of office prescribed by the Montana Constitution. §§ 20-15-210, 20-15-222(2)(a), MCA.

Trustees of a community college district, subject to supervision by the board of regents, have general control and supervision of the community college and its property, have general control of all receipts and disbursements of the community college, have the authority to call and conduct elections of the district and to establish employee benefits, and have other powers and duties prescribed by law. § 20-15-225(1), MCA. In addition, the trustees hold in trust all real and personal property of the district for the benefit of the college and its students. § 20-15-225(2), MCA.

Based upon the construction of the term "public office" by the Montana Supreme Court, I conclude that a member of a community college district board of trustees holds an "elective public office" as that term is used in Article VII, section 10, of the Montana Constitution. A trustee is elected by the people of the district, serves a fixed term, and is required to take an oath to be qualified to hold office. The position is one of trust, to be exercised for the benefit of the people and, although the trustees are under the direction of the board of regents, involves the exercise of independent discretion and judgment.

Finally, you suggest that Article VII, section 10, would prohibit a city judge from filing for future election to the board of trustees but does not prohibit him from continuing in that office by virtue of his position as city judge. The effect of Article VII, section 10, however, is to prohibit a judicial officer from holding any other public office, and the order in which the offices were obtained cannot be considered distinctive. "Statutory or constitutional construction should

not lead to absurd results if a reasonable construction will avoid it." State ex rel. Ronish v. School District No. 1, 136 Mont. 453, 348 P.2d 797, 801 (1960); Gaub v. Milbank Ins. Co., 220 Mont. 424, 715 P.2d 443, 445 (1986). See also 48A C.J.S. Judges § 31 at 584 (1981) (judicial office may become vacant if judge accepts or continues to hold another office of profit or trust).

Accordingly, since a city judge constitutes the "holder of a judicial position" and a member of a community college board of trustees holds an "elective public office," section 10 of Article VII of the Montana Constitution prohibits the city judge from holding that office.

Although you suggest that the two offices are not incompatible, I find it unnecessary to consider this issue because compatibility is not a factor under the language of the constitution.

THEREFORE, IT IS MY OPINION:

A city judge is prohibited by Article VII, section 10, of the Montana Constitution from holding office as an elected trustee of a community college district.

Sincerely,



MARC RACICOT  
Attorney General



NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists 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 Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1991. This table includes those rules adopted during the period October 1, 1991 through December 31, 1991 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 September 30, 1991, 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 1991 Montana Administrative Register.

## ADMINISTRATION, Department of, Title 2

- 2.21.306 and other rules - Work Cite Closure During A Localized Disaster or Emergency, p. 2209, 994
- 2.21.1801 and other rules - Leave Administration for Salaried Employees, p. 876  
(Public Employees' Retirement Board)
- I-III Annual Retirement Benefit Adjustments for Montana Residents, p. 1888
- 2.43.404 and other rules - Purchasing Service Credits - Election of Coverage Under New PERS Disability Retirement Provisions - Calculation of Payment of Supplemental Retirement Benefits for Retired Municipal Police Officers, p. 1604  
(Teachers' Retirement Board)
- 2.44.306 and other rules - Crediting Military Service - Payment of Benefits at Death - Payment of Child's Benefit - Bonuses as Compensation - Correcting Errors on Wages Not Reported, p. 1770  
(State Compensation Mutual Insurance Fund)
- 2.55.301 and other rules - Medical Deductible Plan - Assignment of Classifications - Premium Ratesetting, p. 1967
- 2.55.301 Method for Assignment of Classifications of Employments, p. 568, 996
- 2.55.310 Variable Pricing Within a Classification, p. 486, 997

AGRICULTURE, Department of, Title 4

- I Notice to Sellers of Financial Risk, p. 1370, 1828
- I Standards for Grading Cultivated Buckwheat, p. 1372, 1830
- I Honeybee Hourly Inspection Fee, p. 880, 1272
- I Grading Standards for Hulless Barley, p. 383, 812
- I-IV Specifying the Exact Scientific Procedures for Testing Kjeldahl Proteins on Barley, Chit and Germinations on Barley and Falling Number Determinations on Wheat, p. 935, 1549
- 4.5.201 and other rules - Designation of Noxious Weeds, p. 210, 511
- 4.10.311 and other rules - Regulatory Status and Use of Aquatic Herbicides, p. 100, 354
- 4.12.1012 Grain Fee Schedule, p. 1374, 1829
- 4.12.1012 Grain Fee Schedule, p. 570, 998
- 4.12.1504 Fee on All Mint Oil Producers, p. 385, 813
- 4.12.3402 Seed Laboratory - Reports - Enforcement, p. 341, 738

STATE AUDITOR, Title 6

- I-XII and other rules - Crop Insurance, p. 1775
- 6.6.103 Examinations - Waiting Periods Before Re-examination, p. 1785

COMMERCE, Department of, Title 8

(Board of Athletics)

- 8.8.3103 and other rules - Point System - Scoring - Number and Duration of Rounds - Mouthpieces, p. 1891
- 8.8.3402 Referees, p. 387, 814

(Board of Barbers)

- 8.10.403 and other rules - Fees - General Requirements - Sanitation Requirements - Teaching Staff - College Requirements - Applications - Procedure Upon Completion - Identification and Sanitation Requirements - Preparation and Publication of Posters, Notices, Orders, New Schools - Violation, p. 344, 911

(Board of Dentistry)

- I Management of Infectious Wastes, p. 1617
- 8.16.401 and other rules - Practice of Dentistry, p. 943
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