

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF DECISION ON  
ARM 1.2.104 pertaining to ) PROPOSED AMENDMENT  
administrative rules services fees )

TO: All Concerned Persons

1. On April 22, 2016, the Secretary of State published MAR Notice No. 44-2-217 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 716 of the 2016 Montana Administrative Register, Issue Number 8.

2. A public hearing on the notice of proposed amendment of the above-stated rule was held on May 16, 2016.

3. The proposed amendment of ARM 1.2.104 generated several comments from county officials that reveal there is some confusion regarding both the Secretary of State's duty to provide a copy of the Administrative Rules of Montana (ARM) to each of the counties and whether or not the Secretary of State is required to provide that copy without charge.

The Secretary of State also received support for the proposed amendment from one county stating "that distribution of updates to the Administrative Rules is a costly and unnecessary practice" and that "all of the information contained in the updates is available online."

Per 2-4-313(1), MCA, the Secretary of State is required to "distribute copies of the ARM and supplements or revisions to the ARM" to the entities listed in that section of the statute, including the governing body of each county. The Secretary of State is also required by 2-4-313(1), MCA, to provide the ARM and its supplements or revisions in "an electronic format, unless a hard copy is requested."

In addition, 2-4-313(2), MCA, requires each county in the state to "maintain a complete, current set of the ARM, including supplements or revisions to the ARM," but also states that "[a]n entity required by this section to maintain a copy or set of the ARM and supplements or revisions to it and a copy of the register complies with this section if it provides access to an electronic version of the current ARM and the current year's issues of the register or the current year's issues and register archives for the prescribed period of time."

To meet the mandates of 2-4-313(1), MCA, and assist counties with providing the electronic access contemplated in 2-4-313(2), MCA, the Secretary of State provides electronic access to the ARM and its supplements and its revisions, as well as current and historical copies of the Register, through the Secretary of State's web site at <http://sos.mt.gov/ARM>.

When 2-4-313, MCA, was enacted, the Secretary of State's Office operated on general fund dollars, meaning the money to run the office was appropriated by the Montana Legislature. However, in 1993, the funding structure of the Secretary of State's Office was changed to an enterprise account, meaning that the office operates on the fees it charges to the customers to whom it provides services.

An historical review of 2-4-313, MCA, especially in light of the funding structure of the Secretary of State's Office, indicates the Montana Legislature intended for the Secretary of State to recover the cost of supplying copies of the ARM and its supplements or revisions to the entities listed in 2-4-313(1), MCA, including counties.

Prior to the passage of House Bill 639 in 2001, the pertinent parts of 2-4-313, MCA (1999) read as follows:

- (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following:
  - (a) attorney general, one copy;
  - (b) clerk of United States district court for the district of Montana, one copy;
  - (c) clerk of United States court of appeals for the ninth circuit, one copy;
  - (d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;
  - (e) state law library, one copy;
  - (f) state historical society, one copy;
  - (g) each unit of the Montana university system, one copy;
  - (h) law library of the university of Montana-Missoula, one copy;
  - (i) legislative services division, two copies;
  - (j) library of congress, one copy;
  - (k) state library, one copy.

\* \* \*

- (3) The secretary of state shall make copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person at prices fixed in accordance with subsection (4).

- (4) The secretary of state shall determine the cost of supplying copies of the ARM and supplements or revisions to the ARM and the register to persons not listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in the cost of printing different parts of the

ARM and supplements or revisions to the ARM and the register. Fees are not refundable.

(5) The secretary of state shall deposit all fees in a proprietary fund.

(6) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register. The secretary of state shall fix the fee to cover the costs of supplying copies of the ARM and supplements or revisions to the ARM and the register to the persons listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in the cost of printing different parts of the ARM and supplements or revisions to the ARM and the register.

On their face, (4) and (6) above contemplated that the Secretary of State would recover the cost of providing copies of the ARM and its supplements or revision to the entities listed in subsection (1) through adjustments to the filing fees charged state agencies for material to be published in ARM.

In 2001, when House Bill 639 was passed, the pertinent parts of 2-4-313, MCA, were changed to read:

- (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following:
  - (a) attorney general, one copy;
  - (b) clerk of United States district court for the district of Montana, one copy;
  - (c) clerk of United States court of appeals for the ninth circuit, one copy;
  - (d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;
  - (e) state law library, one copy;
  - (f) state historical society, one copy;
  - (g) each unit of the Montana university system, one copy;
  - (h) law library of the university of Montana-Missoula, one copy;
  - (i) legislative services division, two copies;
  - (j) library of congress, one copy;
  - (k) state library, one copy.

\* \* \*

(3) The secretary of state shall make copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person for a fee set in accordance with subsection (5). Fees are not refundable.

- (4) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.
- (5) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405.

Notably, in 2001 the limitation of recovering the cost of providing copies of the ARM and its supplements or revision to the entities listed in (1) through adjustments to the filing fees charged state agencies for material to be published in ARM was removed. This, in turn, allowed the Secretary of State to begin recovering the cost through fees set in accordance with 2-15-405, MCA.

4. The Secretary of State believes the Montana Legislature intended that the Secretary of State be able to charge the entities listed in 2-4-313(1), MCA, including counties, for the copies of the ARM and its supplements or revisions that the Secretary of State distributes. The comments received in response to the proposed amendment of ARM 1.2.104, however, clearly indicate there is confusion regarding the plain language of 2-4-313, MCA.

For that reason, the Secretary of State will not proceed with the adoption of the proposed amendment and will seek to clarify the statutory language with proposed legislation in 2017.

/s/ JORGE QUINTANA  
Jorge Quintana  
Rule Reviewer

/s/ LINDA MCCULLOCH  
Linda McCulloch  
Secretary of State

Dated this 8th day of August, 2016.