

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 1

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.8.102 pertaining to incorporation by )  
reference )  
)  
NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT  
  
(AIR QUALITY)

TO: All Concerned Persons

1. On February 4, 2009, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 26, 2009, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) remains the same.

(2) The following subparts, or portions thereof, of 40 CFR Part 60, are excluded from incorporation by reference:

(a) remains the same.

(b) 40 CFR Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units.

(3) remains the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to specifically exempt from the incorporation by reference 40 CFR Part 60, subpart HHHH, which establishes a scheme for regulating emissions of mercury under an emission credit trading program. The U.S. Circuit Court of Appeals for the District of Columbia vacated subpart HHHH on February 8, 2008. Failure to exempt subpart HHHH jeopardizes the appropriate implementation of Montana's mercury control program by imposing dates for certain activities that conflict with deadlines in Montana's Air Quality Permit (MAQP) program. Owners and operators of existing sources filing an application for an MAQP for the purpose of complying with Montana's mercury emission standard for mercury-emitting generating units, found in ARM 17.8.771, will face a

requirement under the now-vacated subpart HHHH to install and certify monitoring equipment by January 1, 2009, before an MAQP imposes deadlines for the same requirement.

4. Concerned persons 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., February 12, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff  
DAVID RUSOFF  
Rule Reviewer

BY: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State, January 5, 2009.

BEFORE THE TEACHERS' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption of the New ) CORRECTED NOTICE OF  
Rules I through IX and amendment of ) AMENDMENT  
ARM 2.44.301A, 2.44.522, and 2.44.523)  
pertaining to the administration of the )  
Teachers' Retirement System of the )  
State of Montana )

TO: All Concerned Persons

1. On November 6, 2008 the Teachers' Retirement Board published MAR Notice No. 2-44-405 regarding the proposed adoption and amendment of the above-stated rules at page 2313 of the 2008 Montana Administrative Register, Issue Number 21. On December 24, 2008 the board published notice of the adoption and amendment of the above-stated rules at page 2619 of the 2008 Montana Administrative Register, Issue Number 24.

2. This corrected notice of amendment is to resolve an error in the amendment of ARM 2.44.301A. The error pertains to failure to indicate rule changes by underlining an additional statute implemented by this rule. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

2.44.301A DEFINITIONS For the purpose of this chapter, the following definitions apply:

(1) through (13) remain as amended.

AUTH: 19-4-201, 19-20-201, MCA

IMP: 19-20-101, 19-20-106, 19-20-204, 19-20-302, MCA

3. The replacement pages for this corrected notice were submitted to the Secretary of State on December 31, 2008.

By: /s/ David L. Senn  
David L. Senn  
Executive Director  
Teachers' Retirement System

By: /s/ Denise Pizzini  
Denise Pizzini, Rule Reviewer  
Teachers' Retirement System

Certified to the Secretary of State January 5, 2009.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.56.502 pertaining to reporting of )  
suspected releases ) (UNDERGROUND STORAGE  
) TANKS)

TO: All Concerned Persons

1. On October 23, 2008, the Department of Environmental Quality published MAR Notice No. 17-279 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2232, 2008 Montana Administrative Register, issue number 20. On November 26, 2008, the department published a second notice of public hearing and extension of comment period on the proposed amendment of the above-stated rule at page 2416, 2008 Montana Administrative Register, issue number 22.

2. The department has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the Remediation Division of the department and the implementing agency or to the 24-hour Disaster and Emergency Services officer available at telephone number (406) 841-3911 within 24 hours of discovery of the existence of any of the following conditions:

(a) through (j) remain as proposed.

(k) activation of a leak detection equipment monitoring alarm, or activation of flow restriction mode for a mechanical line leak detector, unless:

(i) and (ii) remain as proposed.

(iii) records documenting the cause of the condition and the investigative and corrective actions undertaken in response to the condition are maintained for a ~~three~~ one-year period at the facility, or at a readily available alternative site, where the records may be provided for inspection by the department upon request.

(2) remains as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: The commentor suggests that proposed (1)(k) is unnecessary and over-reaching because existing (1)(h)(i) addresses monitoring devices and release detection methods.

RESPONSE: Since there is no ARM 17.56.502(1)(h)(i), the department presumes the commentor meant to assert that proposed ARM 17.56.502(1)(k) is

unnecessary because existing ARM 17.56.502(1)(i) addresses the requirement to report a suspect release to the department when "sampling, testing, or monitoring results from a release detection method, required under subchapter 4, are inconclusive and cannot rule out the occurrence of a release, unless the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling, or testing indicates that the system is not leaking." The department agrees that, under the current rules, when a required release detection method indicates a possible release, owners and operators must notify the department and the implementing agency in accordance with subchapter 5. At present, this release notification requirement exists in both subchapters 4 and 5. Proposed ARM 17.56.502(1)(k) imposes a requirement to investigate and report a suspect release upon activation of any leak detection equipment warnings, alarms, or other abnormal equipment operation notifications, whether the alarm is attached to a required release detection method or not. Under the proposed amendment, (1)(k)(i) through (k)(iii), alarms that are activated by conditions that are investigated, corrected, and determined not to result in a release to the environment do not need to be reported to the department as a suspect release, so long as the cause of the alarm is investigated, discovered, and corrected, a release to the environment has not occurred, the leak detection system is returned to a fully operational condition within 24 hours, and the result of the investigation is documented. Proposed ARM 17.56.502(1)(k) is necessary and within the department's authority to adopt, amend, or repeal rules for the prevention and correction of releases from underground storage tanks (USTs). The proposed rule amendment is intended to prevent or mitigate damage to human health or the environment from releases by explicitly requiring that activation of any leak detection equipment alarm must be promptly addressed. The department has documented at least three significant releases to the environment where leak detection monitoring alarms were activated, the alarm was not promptly reported to the department, and the alarm was not properly acknowledged by the owner or operator. Under all of these scenarios, the amount of fuel released into the environment could have been drastically reduced if the owner or operator had complied with the requirements set forth in proposed ARM 17.56.502(1)(k). The department finds the proposed amendment necessary to strengthen existing release reporting requirements and ensure that releases are promptly reported, investigated, and abated.

COMMENT NO. 2: The commentor opposes the proposed requirement, in (1)(k)(iii), to maintain records related to leak detection equipment warnings and alarms for a period of three years as overly burdensome and above and beyond existing record retention requirements at ARM 17.56.409(2) and (3).

RESPONSE: Since there is no ARM 17.56.409(2) or (3), the department presumes the commentor meant to assert that ARM 17.56.409(1)(b) and (c) set forth a one-year retention period for records related to leak detection. Records related to leak detection equipment warnings, alarms, or abnormal equipment operation notifications support efforts to document, investigate, and promptly correct the conditions that cause or contribute to releases from UST systems. The department believes these records must be maintained for a period of time that will ensure the availability of the records to the owner, operator, department, tank and line tightness

tester, and compliance inspector to assist in documenting and investigating issues related to leak detection equipment operation and maintenance, and later-discovered releases to the environment. The commentor points out that ARM 17.56.409 (at (1)(b) and (c)) requires maintenance of release detection records for one year rather than three years. After considering the comment, the department will modify the record retention period at proposed ARM 17.56.502(1)(k)(iii) to require retention of records documenting the cause of the condition causing the alarm and any investigative and corrective actions taken in response to the alarm for a one-year period rather than a three-year period.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

By: /s/ Richard H. Opper  
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, January 5, 2009.



BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
1.3.201, regarding definitions, and )  
1.3.202, regarding MAPA )

TO: All Concerned Persons

1. On November 26, 2008, the Department of Justice published MAR Notice No. 23-20-206, pertaining to the proposed amendment of the above-stated rules at page 2418 of the 2008 Montana Administrative Register, Issue No. 22.

2. The department has amended the above-stated rules as proposed.

3. No comments were received.

By: /s/ Mike McGrath  
MIKE McGRATH  
Attorney General  
Department of Justice

/s/ Stuart Segrest  
STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State January 5, 2009.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM     )  
24.29.1533 and 24.29.1538 related to the     )  
workers' compensation medical fee         )  
schedule for nonfacilities                     )

NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 6, 2008, the Department of Labor and Industry (department) published MAR Notice No. 24-29-233 regarding the proposed amendment of the above-stated rules at page 2326 of the 2008 Montana Administrative Register, Issue Number 21.

2. On December 1, 2008, the department held a public hearing in Helena concerning the proposed amendments. No public comments or testimony were received by the closing date of December 5, 2008.

3. The department has amended ARM 24.29.1533 and 24.29.1538 exactly as proposed. These amendments will be applied retroactively to January 1, 2009.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 5, 2009

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT,  
ARM 24.201.301, 24.201.401, ) ADOPTION, AND REPEAL  
24.201.410, 24.201.415, 24.201.501, )  
24.201.502, 24.201.510, 24.201.516 )  
through 24.201.518, 24.201.524, )  
24.201.528, 24.201.529, 24.201.535, )  
24.201.704 through 24.201.707, )  
24.201.709, 24.201.710, 24.201.720, )  
24.201.723, 24.201.726, )  
24.201.1102, 24.201.1106, )  
24.201.1107, 24.201.1108, )  
24.201.1111, 24.201.1115, )  
24.201.2137, 24.201.2401, )  
24.201.2410, 24.201.2411, adoption )  
of NEW RULE I through NEW RULE )  
V, and repeal of 24.201.506, )  
24.201.511, 24.201.512, 24.201.715 )  
through 24.201.717, and 24.201.719, )  
all pertaining to accounting )

TO: All Concerned Persons

1. On August 14, 2008, the Board of Public Accountants (board) published MAR Notice No. 24-201-43 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1654 of the 2008 Montana Administrative Register, issue no. 15.

2. On September 5, 2008, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the September 15, 2008, deadline.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: One commenter suggested the board delete "including letter of comments (if any)" from ARM 24.201.1108 because the new peer review standards effective for reviews performed after January 1, 2009, do not include the requirement for a letter of comment.

RESPONSE 1: The board plans to review all rules under subchapter 11 due to the new peer review standards becoming effective in January 2009. The board will consider the commenter's suggestion at that time.

COMMENT 2: One commenter suggested adding language to ARM 24.201.1108(1) to allow use of the Facilitated State Board Access (FSBA) program for submission of peer review reports. The commenter stated that the FSBA is a secure web site that allows peer review results to be posted for direct access by boards of accountancy, it would increase peer review transparency, and membership in FSBA will be required of all administering entities effective in 2009.

RESPONSE 2: The board agrees with the comment and is amending the rule accordingly.

COMMENT 3: One commenter suggested the board replace "unmodified" with "pass" in ARM 24.201.1115, because the new peer review standards effective after January 1, 2009 also make this terminology change.

RESPONSE 3: As stated in response 1, the board will consider the suggestion when reviewing all subchapter 11 rules after the new peer review standards go into effect. The board is amending the rule exactly as proposed.

COMMENT 4: Two commenters asked that the board list the standards for valuation services issued by the AICPA separately in New Rule V.

RESPONSE 4: The board notes that proposed New Rule V already includes the standards for valuation services issued by the AICPA. Therefore the board is adopting the rule exactly as proposed.

4. The board has amended ARM 24.201.301, 24.201.401, 24.201.410, 24.201.415, 24.201.501, 24.201.502, 24.201.510, 24.210.516, 24.201.517, 24.201.518, 24.201.524, 24.201.528, 24.201.529, 24.201.535, 24.201.704, 24.201.705, 24.201.706, 24.201.707, 24.201.709, 24.201.710, 24.201.720, 24.210.723, 24.201.726, 24.201.1102, 24.201.1106, 24.201.1107, 24.201.1111, 24.201.1115, 24.201.2137, 24.201.2401, 24.201.2410, and 24.201.2411 exactly as proposed.

5. The board has adopted NEW RULE I (24.201.532), NEW RULE II (24.201.536), NEW RULE III (24.201.537), NEW RULE IV (24.201.708), and NEW RULE V (24.201.718) exactly as proposed.

6. The board has amended ARM 24.201.1108 with the following changes, stricken matter interlined, new matter underlined:

24.201.1108 ALTERNATIVES AND EXEMPTIONS (1) A practice unit which has undergone an AICPA or board-sanctioned peer review within three calendar years must file a copy of its peer review report, including letter of comments (if any), letter of responses (if any), and acceptance of the review report by the administering entity. Firms may meet this requirement by participating in the Facilitated State Board Access (FSBA) program.

(2) and (3) remain as proposed.

7. The board has repealed ARM 24.201.506, 24.201.511, 24.201.512, 24.201.715, 24.201.716, 24.201.717, and 24.201.719 exactly as proposed.

BOARD OF PUBLIC ACCOUNTANTS  
RICK REISIG, CPA, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 5, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New        )     NOTICE OF ADOPTION  
Rule I (42.4.1702) relating to the         )  
temporary emergency lodging credit        )

TO: All Concerned Persons

1. On October 23, 2008, the department published MAR Notice No. 42-2-801 regarding the proposed adoption of the above-stated rule at page 2262 of the 2008 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 12, 2008, to consider the proposed adoption. No one appeared at the hearing to testify.

3. The department adopts New Rule I (42.4.1702) as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State January 5, 2009

ELECTED OFFICIALS - Funding of constituent services accounts;  
ELECTED OFFICIALS - Expenditure of private funds for constituent services;  
POLITICAL PRACTICES, COMMISSIONER OF - Implementation of rules governing constituent accounts;  
STATUTORY CONSTRUCTION - Effective date of bill stating that it is effective on "passage and approval";  
ADMINISTRATIVE RULES OF MONTANA - Sections 44.10.539, 44.10.540;  
MONTANA CODE ANNOTATED - Sections 1-1-201, 13-37-240, -401, -402;  
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att'y Gen. No. 4 (1995).

- HELD:
1. Montana Code Annotated § 13-37-402 prohibits an elected official covered by the statute from paying for constituent services from any account related to the official's public office other than a constituent services or campaign account. It does not, however, prohibit expenditures for the provision of constituent services from the official's personal funds.
  2. After May 14, 2007, the limitations placed on constituent spending by Mont. Code Ann. §§ 13-37-401 and -402 were in effect.

December 26, 2008

Mr. Greg Jergeson  
Chairman, Public Service Commission  
1701 Prospect Avenue  
Helena, MT 59620-2601

Dear Mr. Jergeson:

You have requested my opinion as to questions that I have rephrased as follows:

1. If an elected Public Service Commissioner accepted and used money donated by private interests to print brochures for his constituents offering energy conservation advice and promoting a scheduled "brownout" to conserve energy, would acceptance of such monies violate the provisions of Mont. Code Ann. §§ 13-37-401 and -402?
2. What funds may an office holder covered by Mont. Code Ann. § 13-37-402 expend on constituent services?
3. Since the legislation enacting Mont. Code Ann. §§ 13-37-401 and -402 was passed with an immediate effective date, are the

statutes applicable to all covered transactions and activities subsequent to the Governor's signing of the bill?

Your letter begins by alleging that Public Service Commissioner Brad Molnar spent funds donated by NorthWestern Energy, PPL Montana, and Wal-Mart to print and mail brochures advertising the "Billings Brownout." This activity occurred in the fall of 2007, after May 14, 2007, the date on which the Governor signed into law House Bill 462, which enacted Mont. Code Ann. §§ 13-37-401 and -402. HB 462 addresses constituent services accounts. Your analysis of the newly enacted constituent services account statutes concluded that "use of monies to provide constituent services that are not surplus campaign funds is prohibited by § 13-37-402, MCA."

I. Hypothetical "brownout" question

In your first question, you pose a fact pattern and ask if these facts violate the newly enacted constituent services account law. Because this question assumes disputed facts concerning the actions of Commissioner Brad Molnar, and because this question is currently in front of the Commissioner of Political Practices, it would not be appropriate for me to answer, and I therefore decline to do so. See 45 Op. Att'y Gen. No. 4 (1995) (Attorney General Mazurek refusing to address an issue because it would require him to resolve disputed issues of fact). Nevertheless, in the interest of providing some guidance regarding the funding of constituent services, I will address your remaining questions as follows.

II. What funds may an office holder covered by Mont. Code Ann. § 13-37-402 expend on constituent services?

For the reasons expressed below, it is my opinion that Mont. Code Ann. § 13-37-402 prohibits an elected official covered by the statute from paying for constituent services from any account related to the official's public office other than a constituent services or campaign account. It does not, however, prohibit expenditures for the provision of constituent services from the official's personal funds.

Montana Code Annotated § 13-37-240(1) requires a person who has been a candidate for political office to dispose of any surplus funds from his or her campaign account "within 120 days after the time of filing the closing campaign report." HB 462 added language to this statute allowing a "successful candidate" for certain state offices, including the Public Service Commission (hereafter "Elected Official"), to "establish a constituent services account as provided for in 13-37-402." Id.

A "constituent services account" is an account established "to pay for constituent services," which are defined as expenses "incurred to represent and serve constituents" including "travel, mailing and other expenses incurred to represent and serve constituents and authorized in rules adopted by the commissioner [of political practices] to implement [this act]." Mont. Code Ann. § 13-37-401(1). The



Commissioner of Political Practices has adopted rules authorizing certain expenditures, such as travel and mailing expenses, and precluding others, such as fundraising expenses. Mont. Admin. R. 44.10.540.

Montana Code Annotated § 13-37-402 sets the parameters for establishing, funding, and using constituent services accounts. An Elected Official "may deposit only surplus campaign funds in a constituent services account." Mont. Code Ann. § 13-37-402(2)(a) (emphasis added). Further, any funds in the account "may be used only for constituent services." Mont. Code Ann. § 13-37-402(2)(b) (emphasis added). Expenditures from the constituent services account, however, "may not be made when the holder of the constituent services account also has an open campaign account." Id. Finally, an Elected Official "may not establish any account related to the public official's office other than a constituent services account," although this prohibition does not prevent the establishment of a campaign account. Mont. Code Ann. § 13-37-402(3).

In interpreting statutory language, I follow the same rules applied by courts. The plain language of a statute controls, and I may neither add what has been omitted nor omit what the Legislature has included. Mont. Code Ann. § 1-2-101. Where the language of a statute is plain on its face, resort to extrinsic rules of construction is inappropriate. See, e.g., Marriage of Christian, 1999 MT 189, ¶ 12, 295 Mont. 352, 983 P.2d 966.

The plain language of Mont. Code Ann. § 13-37-402 places limits on constituent spending by an Elected Official from an "account." An Elected Official may not use any account "related to the public official's office" to pay for constituent services, other than a constituent services account or an active campaign account. Mont. Code Ann. § 13-37-402(3). Further, a constituent services account may only be funded with "surplus campaign funds," which prohibits an Elected Official from soliciting or receiving funds for deposit in a constituent services account. Mont. Code Ann. § 13-37-402(2); Mont. Admin. R. 44.10.539(1)(b). Nothing in this law, however, precludes use of funds from a personal account for any purpose, including the provision of constituent services.

Questions may arise as to whether a purportedly personal account has been established as a surrogate for a campaign or constituent services account. In such cases the application of Mont. Code Ann. § 13-37-402 will depend on factual issues, which would include, for example, the Elected Official's intent in establishing or spending from the account. In any actions seeking enforcement of Mont. Code Ann. § 13-37-402, such issues would be resolved by the finder of fact.

III. When did HB 462 become effective and what transactions are covered?

HB 462 provides that it "is effective on passage and approval." As noted above, the bill was signed into law by the Governor on May 14, 2007. See Compiler's Comments to Mont. Code Ann. §§ 13-37-240, -401, and -402. Based on the plain language of HB 462, it became the effective law of Montana on May 14, 2007. After that date, the limitations placed on constituent spending by Mont. Code Ann. §§ 13-37-401 and -402, as described above, were in effect.

THEREFORE, IT IS MY OPINION:

1. Montana Code Annotated § 13-37-402 prohibits an elected official covered by the statute from paying for constituent services from any account related to the official's public office other than a constituent services or campaign account. It does not, however, prohibit expenditures for the provision of constituent services from the official's personal funds.
2. After May 14, 2007, the limitations placed on constituent spending by Mont. Code Ann. §§ 13-37-401 and -402 were in effect.

Very truly yours,

/s/ Mike McGrath  
MIKE McGRATH  
Attorney General

mm/cdt/bjh

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

## 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 or Register)** is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### **Use of the Administrative Rules of Montana (ARM):**

- |               |   |
|---------------|---|
| Known Subject | 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       | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2008. This table includes those rules adopted during the period September 1, 2008, through December 31, 2008, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2008, 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 2008 Montana Administrative Register.

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