EXHIBIT 2
DATE 2/20/07
HB 769

RESOLUTION 2006- 15

LEGAL ADVERTISING AND PRINTING CONTRACTS

It is the intent of the Montana Association of Counties to support legislation to amend Section 7-5-2411(b), MCA that requires county legal advertising and printing contracts be awarded only to newspapers with "paid" circulation.

WHEREAS, The Montana Association of Counties seeks to encourage the efficient use of taxes paid by citizens of Montana; and

WHEREAS, House Bill 474, enacted as Chapter 444, Laws of 2005, amended Section 7-1-2121(2)(a)(i), MCA, removing the requirement that public notices be placed in a newspaper of general "paid" circulation; and

WHEREAS, prior to the enactment of Chapter 444, Laws of 2005, Section 7-1-2121 (2)(a)(i) MCA was in conformity with Section 7-5-2411(b); and

WHEREAS, the enactment of Chapter 444, Laws of 2005 created a conflict between Section 7-1-2121 (2)(a)(i), MCA and Section 7-5-2411(b) MCA; and

WHEREAS, the contracts for legal advertising and county printing as required by Montana Code represents a significant cost to county governments; and

WHEREAS, the requirements of MCA 7-5-2411(b) that all advertising required by law and county printing be awarded to a newspaper of paid circulation with a second-class mailing permit typically forces contracts to be awarded exclusively to a single local newspaper of paid circulation; and

WHEREAS, the requirement to contract all legal advertising and county printing to a newspaper of paid circulation often prevents county governments from obtaining competitive pricing from their local newspapers; and

WHEREAS, several reputable newspapers of unpaid general circulation are currently published and circulated in various Montana communities, including Missoula, Billings, Butte, and Helena; and

WHEREAS, these reputable newspapers of unpaid general circulation satisfy the requirements of Montana Code related to the publication of notices placed by private parties for a wide variety of legal purposes, such as issuing a summons or providing notice to creditors; and

WHEREAS, the state law requiring Montana's counties to contract for all legal advertising and county printing exclusively to paid circulation newspapers with periodical mailing permits provides no meaningful benefit to either the government or the citizens; and

WHEREAS, Montana's counties could realize a substantial savings by having newspapers compete for the opportunity to publish county government's legal advertising and printing county forms; and

NOW, THEREFORE, BE IT RESOLVED, that the Montana Association of Counties will support legislation revising Montana Code section 7-5-2411(b) to eliminate the requirement that county governments must award contracts for legal advertising and county printing exclusively to newspapers of paid circulation with periodical mailing permits, and eliminate the conflict between Section 7-1-2121 (2)(a)(i), MCA, and Section 7-5-2411(b) MCA.

SPONSOR:	MACo Resolutions Committee
RECOMMENDATION:	Do Pass
PRIORITY:	High
REFERRED TO:	MACo Resolutions Committee
ADOPTED:	Annual Conference, Bozeman, MT September 27, 2006

7-5-2411. County printing contract. (1) The county commissioners shall contract for all advertising required by law and all printed forms required by the county. The advertising required by law must be awarded to a newspaper that:

(a) is published in the county;

(b) has general ~~bona fide and paid~~ circulation ~~with the second-class mailing privilege~~; and

(c) has been published continuously at least once a week in the county for the 12 months preceding the awarding of the contract.

(2) Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job.

(3) (a) The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.

(b) A printing establishment must be added to the county clerk and recorder's list when the clerk and recorder receives a written request from the printing establishment.

(c) The county clerk and recorder may delete the name of any printing establishment from the list if it has not submitted a bid during the previous 365 days.

7-1-2121. Publication and content of notice -- proof of publication. Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) (a) The newspaper must be:

(i) of general circulation;

(ii) published at least once a week; and

(iii) published in the county where the hearing or other action will take place.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating each publication.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

History: En. Sec. 1, Ch. 349, L. 1985; amd. Sec. 1, Ch. 354, L. 2001; amd. Sec. 1, Ch. 444, L. 2005.

Compiler's Comments:

2005 Amendment: Chapter 444 in (2)(a)(i) substituted "general circulation" for "general paid circulation with a periodicals mailing permit"; inserted (2)(b) relating to items produced or published by the local government; and made minor changes in style. Amendment effective October 1, 2005.

July 29, 2005

Representative Rosie Buzzas
233 University Avenue
Missoula, Montana 59801

Dear Representative Buzzas:

I am writing in response to your request for an analysis of the efficacy of House Bill No. 474 in light of an opinion rendered to the Montana Newspaper Association. That opinion concludes that House Bill No. 474 did not change the requirement that county legal advertising can only be published in a newspaper that has a bona fide and paid circulation with a second class mailing privilege pursuant to section 7-5-2411, MCA. The opinion determines that House Bill No. 474 amended section 7-1-2121, MCA, which governs only the proof of publication for nonmunicipal legal advertising.

I have reviewed the bill drafting file for LC 1521, which was introduced as House Bill No. 474. The bill drafting request was based upon Resolution 2004-9 from the Montana Association of Counties. The bill drafting request and the underlying resolution both specifically request the amendment of section 7-1-2121, MCA. Because the bill did exactly what was specifically requested, the question becomes whether the bill achieved the "purpose" of the supporters.

Section 7-1-2121, MCA, governs the publication and content of notice by local governments other than municipalities. Section 7-1-2121, MCA, was enacted by Chapter 349, Laws of 1985 (Senate Bill No. 130). The purpose of Chapter 349, Laws of 1985, was to standardize notice requirements relating to the conduct of business of local government units other than municipalities. The bill was intended to make the process of advertising notices a much less complicated procedure. The bill was opposed by the Montana Press Association. The Montana Press Association suggested that there was a good reason for the different types of notices. The Senate Local Government Committee amended the bill to include additional sections of the code that were not originally included in the bill. As introduced and enacted, section 7-1-2121, MCA, was in conformity with section 7-5-2411, MCA. Section 7-5-2411, MCA, governs county printing contracts. That section requires county commissioner to contract for all advertising required by law and all printed forms required by the county. The advertising required by law must be awarded to a newspaper that is published in the county, has general bona fide and paid circulation with the second-class mailing privilege, and has been published continuously at least once a week in the county for the 12 months preceding the awarding of the contract. Prior to the enactment of House Bill No. 474, those same criteria were contained in section 7-1-2121, MCA.

Unfortunately, the passage of House Bill No. 474 changed the criteria in section 7-1-2121, MCA, while leaving the former criteria in section 7-5-2411, MCA, intact. The resulting conflict was not discovered in the drafting process (for which I apologize) and was not disclosed during the hearing process on House Bill No. 474. I have reviewed the committee minutes for House Bill No. 474. The opponents to House Bill No. 474 were John Shontz, representing Lee Enterprises, and Jim Fall, representing the Montana Newspaper Association. The opposition to House Bill

No. 474 was premised upon the proposition that the bill would threaten the people's right to be informed and would threaten the integrity of the statutory public notice requirements. At no point during the discussion on House Bill No. 474 was the inadvertent conflict with section 7-5-2411, MCA, pointed out.

House Bill No. 474 did not amend the wrong statute, it failed to amend all pertinent statutes. The result of that oversight is that a conflict exists between sections 7-1-2121 and 7-5-2411, MCA. A specific statute prevails over a general statute. See Smith v. State, 1998 MT 94, 288 Mont. 383, 958 P.2d 677 (1998), and State ex rel. Browman v. Wood, 168 Mont. 341, 543 P.2d 184 (1975). A Legislature in adopting an amendment is presumed to intend some change in the existing law, and the courts will endeavor to give effect to that amendment. Gwynn v. Eureka, 178 Mont. 191, 582 P.2d 1262 (1978), following State ex rel. Jones v. Giles, 168 Mont. 130, 541 P.2d 355 (1975).

Amendment of a statute by implication is not favored. See State ex rel. Malott v. Board of County Commissioners, 89 Mont. 37, 296 P. 1 (1930). However, an amendment by implication is clearly present where two statutory enactments are clearly repugnant. If two acts on the same subject are so repugnant as to be irreconcilable or if the later act is inconsistent with the first and the Legislature intended it should be the only law on the subject, the prior statute is repealed by it. State ex rel. Jackson v. District Court, 107 M 30, 79 P2d 665 (1938). The Supreme Court looks with disfavor upon repeal by implication. Without an express declaration by the Legislature that an enactment repeals an existing law, a later statute will not repeal an earlier law unless the two are plainly and irreconcilably repugnant to or in conflict with each other. W.R. Grace & Co. v. Department of Revenue, 238 Mont. 439, 779 P.2d 470 (1989).

Senate Bill No. 187, enacted as Chapter 354, Laws of 2001, standardized the public notice provision for local government units. The standardized notice requirements are contained in section 7-1-2121, MCA. There are 80 other code sections that refer to publishing notice as required in section 7-1-2121, MCA. Units of local government other than counties will still be able to comply with notice requirements by following the provisions of section 7-1-2121, MCA. Although a plausible argument can be made that House Bill No. 474 impliedly amended or repealed section 7-5-2411, MCA, any attempt to interpret House Bill No. 474 as having amended or repealed section 7-5-2411, MCA, would undoubtedly result in litigation. Because the Legislature inadvertently created the statutory conflict, the Legislature should fix the conflict regardless of any litigation.

I hope that I have addressed your question. If you have any additional questions, please feel free to contact me.

Sincerely,

Gregory J. Petesch
Director of Legal Services