



ADMINISTRATIVE RULES OF MONTANA

44.11.102 ADVISORY OPINIONS AND SELECTED INCORPORATION OF CERTAIN ATTORNEY GENERAL RULES, REGARDING DECLARATORY RULINGS AND RULEMAKING

- (1) In cases when a formal declaratory ruling proceeding is requested by a person through the filing of a petition as prescribed in ARM 1.3.226, the commissioner adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules ARM 1.3.227 through 1.3.229 effective August 15, 2008, and are available online from the secretary of state at <http://www.mtrules.org/>.
- (2) In all other cases, the commissioner will issue "advisory opinions" under the following procedure:
 - (a) A person desiring an interpretation to determine the applicability of a rule or statute administered by the commissioner to the person's activity or proposed activity may request an advisory opinion. All requests for an advisory opinion shall be in writing and shall contain:
 - (i) The identity, address, and signature of the person requesting the opinion.
 - (ii) A complete statement of the facts and circumstances upon which the commissioner is to base an opinion.
 - (iii) The rule or statute for which the person seeks an opinion.
 - (iv) The specific question presented for decision by the commissioner.
 - (b) The commissioner may request a memorandum of authority containing basic research and points of law bearing on the request. The memorandum should include the requesting party's own conclusion on the question presented.
 - (c) Within a reasonable time after the receipt of a request for an advisory opinion, the commissioner shall consider the request and, based upon the facts presented in the request, prepare an opinion in writing, except as provided in (i). The commissioner may seek public comment prior to issuing an advisory opinion, depending on the particular question presented for an opinion.
 - (i) The commissioner will not issue an advisory opinion, but will notify the inquirer of the determination, when:
 - (A) The issue is the subject of pending litigation.
 - (B) A prior opinion has been rendered that addresses the fact and question presented in a subsequent request.
 - (C) The facts are inadequate for a determination, or the request requires resolution of a factual dispute.
 - (D) The issue involves wholly abstract or hypothetical factual situations.

- (d) An advisory opinion will be rendered upon the facts submitted in the request and over the signature of the commissioner. A copy of the opinion will be mailed to the inquirer and published in a manner which will provide wide public dissemination. The commissioner will maintain an index of all opinions and will make an opinion available upon request.
 - (e) An advisory opinion rendered in accordance with this rule is binding between the commissioner and the inquirer on the statement of facts alleged in the written request. An advisory opinion is not subject to judicial review. A person desiring judicial review of an advisory opinion shall file a formal petition for declaratory ruling, pursuant to 2-4-501, MCA, and this rule.
 - (f) A later advisory opinion or declaratory ruling overrules an earlier advisory opinion or declaratory ruling with which it is necessarily in conflict.
 - (g) A request for a declaratory ruling or an advisory opinion shall have no effect on the commissioner's investigation of and disposition of a formal complaint on the same issue or a related dispute filed pursuant to ARM 44.11.106.
- (3) In cases when the COPP engages in agency rulemaking, the commissioner adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules ARM 1.3.201, 1.3.202, and 1.3.304 through 1.3.313 effective August 15, 2008, and are available online from the secretary of state at <http://www.mtrules.org/>.

The December 2015 poll of the Montana Legislature on proposed amendment of 44.10.201 (ARM 44.11.102) ADVISORY OPINIONS AND SELECTED INCORPORATION OF CERTAIN ATTORNEY GENERAL MODEL RULES, IN PART REGARDING DECLARATORY RULINGS AND RULEMAKING in MAR Notice No. 44-2-207 was as follows: 34 Senators voted the proposed rule is consistent with legislative intent; 12 Senators voted the proposed rule is contrary to legislative intent; 65 Representatives voted the proposed rule is consistent with legislative intent; and 19 Representatives voted the proposed rule is contrary to legislative intent.

Authorizing statute(s): 13-37-114, MCA

Implementing statute(s): 2-4-201, MCA

History: NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; AMD, 1979 MAR p. 652, Eff. 7/1/79; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD, from 44.10.201, 2016 MAR p. 28, Eff. 1/9/16.