

JANUARY 2011 PIB NON AGENDA ISSUES

Pursuant to Mont. Code Ann. 2-3-103, the Montana Department of Corrections SHALL develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. Those procedures MUST ensure adequate notice to assist public participation before a final action is taken that is of significant interest to the public. The agenda as defined in 2-3-202 MCA, MUST include an item allowing public comment on any public matter that is on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting.

However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comments that are received at the meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

The legislation of Montana has clearly set forth a right to comment on NON- AGENDA ISSUES that are applicable to "**any public matter**" regardless of the level of interest to the public. See 51 Mont. Attorney General Opinion No. 12.

In accord with the above referenced authorities, the following "non-agenda" items are forwarded to the PIB well in advance of the scheduled January 2011 meeting, so that the chairman of the Board can list them on the agenda and provide adequate notice that they will be discussed at the meeting. Each "non-agenda" item and related comments, concern matters within the jurisdiction of the Montana Department of corrections and is therefore within the pervue of the PIB.

- 1) Guidelines for MDOC written as Rules (ie. public participation in Operation of agency MCA 2-3-103).
- 2) Inmate Collect calling System (ie. Public participation in contract).
- 3) IWF expenditures (ie. Inmate/public participation).
- 4) Sale of contraband at MSP as revenue for IWF (MCA 53-1-105)
- 5) Inmate cable TV contract (ie. Public participation)

- 6) Inmate cable TV censorship (why and under what lawful authority).
- 7) Applicability of ACA Standards at MSP (ie. Recreation/housing and law library).
- 8) MDOC Code of Ethics oversight (ie. Not enforced at facilities).
- 9) Policy 1.3.12 Staff association and conduct w/offenders (not enforced).
- 10) Canteen (ie. Who selects goods and sets prices, who operates it).
- 11) Inaccuracy of PIB minutes.

COMMENTS ON NON AGENDA ITEMS

Guidelines for MDOC written as rules

The Montana department of corrections appears to not have any written Guidelines written and published as rules with regard to assisting public participation in the operation of MSP and MCE which are both divisions of the MDOC. Such rules are to be available to the public upon request. They are to include procedures as follows:

- 1) Permitting and encouraging the public to participate an agency decisions that are of significant interest to the public
- 2) Procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.
- 3) The agenda for a meeting, as defined by 2-3-202 must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting
- 4) The agency may not take action on any matter discussed unless specific notice of the matter is included on an agenda and public comment has been allowed on that matter.
- 5) Public comment received at the meeting must be incorporated into the official minutes of the meeting as provided in 2-3-212.
- 6) The adoption of coordinated rules for all MDOC programs
- 7) Must provide policies and procedures that facilitate public participation in department programs consistent with the above.

The Governor of the state of Montana is required to ensure that the above guidelines are adopted for any Board, Bureau, Commission, Department, Authority, Agency or Officer of the Executive Branch of the State. See MCA 2-3-103.

NOTE: I have attached a letter that was sent by our honorable Governor to all directors of state agencies with his supporting memorandum. Please incorporate into the minutes of this meeting

My argument is this: If the Governors Directive is being followed, then how is it that MDOC/MSP/MCE administrators, directors and other officers or authorities have not provided me with written rules setting forth policies and procedures that facilitate my participation in those programs and decisions?

MSP and MCE, under MDOC authority, fail to ever inform me of all its programs that are available within the secure facilities. The ones I am given notice of, I'm not provided any encouraging assistance in participation.

I've asked about participating in the hobby program and policy decisions.- no assistance offered.

I've asked about participation in your visitation program at MSP. – no assistance offered.

I've asked about participation in the mail policy decision. – no assistance offered.

I've attempted to participate in the recreation program at MSP. – no assistance offered.

I've attempted to participate in the IWF program. – no assistance offered.

I've attempted to participate in the inmate collect calling program and to participate in the contract procedures. - no assistance offered.

It's obvious you're in need of policies and procedures that expressly encourage and assist in my participation as the Governor has so directed.

Inmate collect calling system

There is an inmate collect calling system at MSP, CCA Shelby, Women's prison, Great Falls Regional, Dawson county Regional and the Start program.

I have requested over and over to have some say in the decisions with regard to the contracts between private phone companies and the agreement reached concerning commissions and call rates.

As I understand, the MSP/ MDOC contract with PCS allows the private phone company to charge citizens excessive charges simply because family member with whom we love are incarcerated. They are some of the highest rates in the United States. At MSP the rates are \$2.95 for a connection fee and an additional 20 cents per minute.

That high call rate is due in part to the 40% commission or kick back that the carrier pays the institution.

In Montana, that 40% commission is placed in the Inmate Welfare Fund and is to be used for the benefit of inmates and their families, according to Statute. See IWF expenditures. Not so much the case in recent years at MSP. No family days. No visiting holiday parties for kids, etc.

These high rates are burdening communications between the inmates and families and in some cases they are prevented. These excessive service rates are weakening family and community ties that are necessary for successful reentry into society by offenders, which also effects reduction in crime. In 2009, our House of Representatives in the US Congress presented a bill that would amend the communications act of 1934, to require the FCC to prescribe rules regulating inmate telephone services. Short Title: Family telephone Connection Protection Act of 2009. Attached for incorporation into minutes. The result would be no more commission kick backs to prison administrators.

I am against a total ban on commissions as long as the monies generated are used wisely. It is I and other tax payers who are creating the majority of the IWF revenue through the excessive phone rates and we get no say!!!! Enough is enough.

What is more bothersome is that the plain language of the statutes state I and the inmates are to receive the benefits of the IWF revenue. MSP has disbanded almost all IWF sponsored family activities (ie. Holiday activities for kids in the visiting room, IWF handouts, Family Day, Veterans Day, Native family/spiritual activities, and the photo program has been diminished, etc.) all the while, the administration receives most of the benefits for funding its state sponsored education programs and equipment.

If you are going to tax my phone to generate the IWF then it needs to benefit me and the inmates through expansion of family oriented programs. Those programs existed for years to enhance family ties and ties to the community. That needs to be revived at MSP again.

MSP's current practices that have diminished family/inmate activities such as family day are not doing the inmates or public any favors.

IWF Expenditures (inmate & public participation)

There is a prison inmate welfare account authorized by Montana statute MCA 53-1-109. Most of the revenue generated for the IWF fund is generated by the net proceeds from the inmate collect calling system. A small portion of the fund is generated from inmate canteen purchases and food sales.

It is the duty of the wardens in each institution to consult with the inmates about the use of the money. It can only be used for the needs of the inmates and their families as expressed by the statute (53-1-109).

At the Montana State Prison in Deer Lodge, the inmate representative system that had been in place for years was dismantled by new policy in 2006. There used to be an elected inmate IWF rep in each unit. That is now prohibited. The warden now appoints one rep from the low side and one from the high side. Those reps are not authorized to communicate with inmates in various housing units where he is not housed, making consulting impossible. The warden (associate warden Beason) does not personally consult with the inmates about the expenditures either.

The unit IWF counsel needs to be in place again to ensure the inmate population at MSP receives adequate consultation.

The above statute in no way exempts the Dept. from allowing public participation under Montana's Const. and 2-3-103. The inmates families are the main contributors to the IWF fund and their participation should therefore be of great consideration before final decisions are made about where and for what purpose the monies are spent. The minutes from any inmate/warden meetings concerning the IWF fund should be posted on the internet to assist public participation.

Sale of contraband at MSP as revenue for IWF

Under MCA 53-1-109 the legislation has authorized MDOC to generate revenue for the IWF fund from the net proceeds from various sources which include inmate phone system, disposition of confiscated contraband and net proceeds from inmate canteen purchases.

The prison system no longer generates monies from confiscated contraband.

It used to be the practice at MSP that when TVs were confiscated as contraband they were sold back to inmates at a fraction of the original price. TVs and other electronic equipment is confiscated every day in the prison system. The tracking of where those items go or what is done with them is not clear. They need to be sold for IWF money.

There is also thousands of dollars worth of hobby items such as horsehair and beads confiscated as contraband all the time. It is destroyed rather than sold for the IWF.

In an effort to better utilize department resources policy needs to be implemented that tracks the disposition of confiscated inmate property and which also provides a method for disposing of that property in a way that generates IWF money.

We want this considered as soon as possible.

Inmate cable TV contract

The prison system contracts with local cable companies to provide the inmates with a basic cable package for their TV system. The TV system has been paid for with IWF funds.

The IWF is the sole source of monies for the inmate TV system. Because the inmates families are the main source for IWF revenue, they should be included in the decisions in regards to the TV cable contract with private vendors.

Censorship of inmate cable TV

The current administration at MSP is considering censoring already censored TV shows to the point of actually deciding to totally exclude certain cable channels for reasons that are not permissible under either MT or US Constitutions. Some possible censoring programming includes channels such as the history channel, FX, TLC, TCM. Most of the programming has already been censored through a rating process by the federal FCC (PG14 and MA). The administration wants to censor the basic cable package further, claiming some programming violates correspondence policy.

First of all, the administration has not been delegated any authority to censor any TV or cable programming. This authority lies with congress or the state legislature, not a state agency.

Secondly, the administration proffered reason for the censorship are not content neutral, or based on sound penological interest. The secondary decisions are arbitrary and irrational and a violation of inmate's first amendment rights.

Lastly, these policy decisions are being made without the public's participation in violation of Montana's Constitution and Statutes.

The administration has an obligation to assist and encourage public participation in those final decisions regarding the inmate TV system.

Applicability of ACA Standards at MSP

The legislation of Montana mandates that private and regional prisons adopt specific standards such as ACA Standards. Under such standards there is compliance monitoring to ensure they are followed.

However, at MSP the adoption of ACA Standards is not mandatory. As we all know, MSP only follows ACA Standards when it's a benefit to the administration and adverse to inmate privileges. Is this an exaggerated statement? NO.

Both close units I and II, which are general housing units, house inmates in cells with less than 80 cubic square feet of unencumbered floor space.

ACA Standards require that inmates cannot be locked down in that small of a cell for more than 10 hours a day. In close I, inmates are only let out of their cell for about 7 hours a day. Two inmates being confined in that small of a space for 17 hours a day is a long way from compliance with ACA Standards.

Inmates in close I brought this as a written agenda issue at the November 2010, inmate rep meeting. Unit manager Michelle Steyh refused to even make it a part of the official minutes, thus the reason for bringing it up here.

Due to the small cell sizes in close I and close II inmates need to be locked down no more than 10 hours per 24 hour period. This brings MSP in compliance with ACA Standards 4-4132 Inmate Housing.

MDOC code of ethics oversight

The MDOC code of ethics means nothing if it is not enforced. It is one of the most important duties a prison official has. When it is not followed the public trust is eroded and ignoring its mandate involving treatment of prisoners, creates safety and security issues.

I would like to request that MDOC conduct a survey within the secure facilities to assess the efficacy of this policy direction under MDOC policy 1.3.2. All inmates should be given opportunity to participate.

Policy 1.3.12 Staff association and conduct with offenders

For more than three years we have vigorously attempted to follow up on whether the provisions of this policy are made aware to all staff and inmates. No one seems to care, and its one of the only oversight policies MDOC has in place.

The majority of both staff and inmate are not aware of the provisions of this policy. It is separate from the grievance policy and would be more effective if enforced.

Here's a specific example: Ron Britt is a Native American inmate in Close I. He is not a gang member. Shortly after January 1st when the newly written hygiene policy went into place, Mr. Britt was threatened by officer Hess (MSP gang coordinator) when leaving the chow hall. (This is on camera). Hess threatened to put Mr. Britt in the hole if he didn't cut his long pencil sized braid that he has worn for years. Ron immediately asserted his Native American religious beliefs and gave explanation. Hess continued to threaten and harass Mr. Britt. Mr. Britt was later called to unit manager Steyh's office in close I where he was further threatened and harassed. He again asserted his long standing Native American beliefs and traditions.

Following all this harassment Mr. Britt verbally informed several officers in the unit of the threats and explained that this sort of situation had been discussed at the Sept. PIB meeting concerning the policy change(see Sept minutes) according to the Board, Mr. Britt's assertion of his Native American beliefs should have protected him. Mr. Britt requested someone (officers in close I) fill out a mandatory reporting form. All of them implied or claimed they first weren't aware of the policy and secondly that they feared retaliation for filing such a report. Within days, and at 12am on January 11, Mr. Britt was awoken and taken to the hole.

This is the norm when the few inmates who are aware of this policy ask for it to be enforced. Very few know it exists, let alone its provisions. Why is this? It is mandatory that all inmates and staff be aware of it.

I believe it's because there is a "code of silence" within MDOC that overrides the Code of Ethics.

I am also requesting that the administration in each secure facility conduct a survey to question inmates about whether this policy is available and enforced. This will allow the public to evaluate the efficacy of this policy directive and demonstrate the Departments transparency.

Canteen (who is responsible for operation, selection of goods sold and pricing)

It appears that MCE controls how the canteen in the secure facilities is operated. However, MCE nor MSP have ever been given authority to set pricing for the goods sold. At the last PIB meeting it was declared that MCE increased the size of canteen with 1.9 million dollars in revenue with \$160,000.00 net revenue with only 50% going back to facilities. Is MCE absorbing gross revenues into the cost of operation to offset net revenues? Who determines final decisions with regard to selection of goods offered to inmates and the pricing of those goods? What's the mark up?

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

TO: Department Directors
Mike McGrath, Attorney General
Linda McCulloch, Superintendent of Public Instruction
John Morrison, State Auditor
Brad Johnson, Secretary of State
Sheila Stearns, Commissioner of Higher Education

FROM: Governor Brian Schweitzer

DATE: October 31, 2006

RE: Public participation in agency decisions pursuant to MCA § 2-3-103

Enclosed is a memorandum concerning the public's right to participate in agency actions, as provided under the Montana Constitution and Montana statutes. It is my responsibility under MCA § 2-3-103(2) to ensure that the agencies subject to the public participation statutes comply.

The enclosed memorandum is addressed not only to each of you, but also to all executive branch agencies, including boards, bureaus, commissions, departments, authorities and officers of the executive branch of government, as defined in MCA § 2-3-102(1). I ask that you take responsibility for distributing it to the presiding officers of the boards, bureaus, commissions, authorities, and agencies within or attached to your organization. If you have further questions as to whom the memorandum should be distributed, I refer you to the definition of "agency," found at MCA § 2-3-102(1).

Thank you for your assistance and cooperation in distributing the attached memorandum.

Executive Branch Officers
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conformity with the public participation laws where a person's rights have been prejudiced. Model rules to implement these laws are found at ARM §§ 1.3.101 and 1.3.102.

As you know, this Administration takes very seriously the public's right to participate in the decisions of government, and I applaud your efforts to ensure this public right. If you or your agency needs assistance in crafting appropriate guidelines and rules to conform to Montana's public participation laws, feel free to contact my legal counsel, Ann Brodaky, for assistance (direct line, 444-3558).

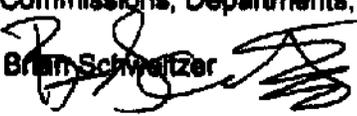
OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

TO: Executive Branch Officers
Department Directors
Chairs and other Presiding Officers of All Executive Branch Boards,
Bureaus, Commissions, Departments, Authorities, and Agencies

FROM: Governor Brian Schweitzer 

DATE: October 28, 2008

RE: Public participation in agency decisions pursuant to MCA § 2-3-103

Montana's public participation laws require me, as Governor, "to ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state" adopts rules, setting forth policies and procedures to facilitate public participation in agency programs and decisions. MCA § 2-3-103(2). I wrote you in 2005, 2006, and 2007 to remind you of these statutory obligations for your agency, and I again take this opportunity to remind you of these requirements.

Montanans have a constitutional right to participate in the activities of their government. The "Right of Participation" is found at Article II, section 8 of the Montana Constitution, which provides:

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

This important constitutional right is implemented by Montana statutes, which require every agency, as defined in MCA § 2-3-102(1), to "develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public." MCA § 2-3-103(1); see also MCA Title 2, chapter 3, part 1 in its entirety. The statutes require agencies to provide adequate notice to the public and assist public participation. Meeting agendas must include an item allowing public comment on any public matter not on the agenda but within the agency's jurisdiction. The agency may not act on any matter that was not included on the agenda and for which public comment on the matter was not allowed. Public comments must be incorporated into the official minutes of the meeting. The district courts may set aside agency decisions not in