

SECRETARY OF STATE

STATE OF MONTANA
BOB BROWN

B-8

Business Services Bureau
Pat Haffey, Deputy



Montana State Capitol
PO Box 202801
Helena, MT 59620-2801
(406)444-3665
<http://www.state.mt.us/sos/>

MOUNTAINVIEW MEDICAL CENTER, INC.
16 W MAIN BOX Q
WHITE SULPHUR SPRINGS MT 59645

April 25, 2001

Dear Sir or Madam:

RE: OLD NAME:
MOUNTAINVIEW MEMORIAL
HOSPITAL, INC.
NEW NAME: MOUNTAINVIEW
MEDICAL CENTER, INC.
Date of Filing: April 9, 2001
Filing Number: 378660 - D23917

I've approved the filing of the documents for the above named entity. The document number and filing date have been recorded on the original document. This letter serves as your certificate of filing and should be maintained in your files for future reference.

Thank you for giving this office the opportunity to serve you. If you have any questions in this regard, or need additional assistance, please do not hesitate to contact the Business Services Bureau professionals at (406) 444-3665.

Sincerely,

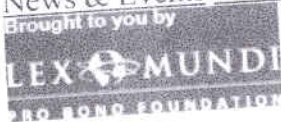
Bob Brown

Bob Brown
Secretary of State
Enclosure



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Montana Nonprofit Corporations

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Overview

Nonprofit corporations are created to support charitable, religious, educational, scientific or artistic endeavors. The Montana Nonprofit Corporation Act governs the formation, operation, and dissolution of nonprofit corporations in Montana. A nonprofit corporation is managed by the board of directors and operated by its officers and employees. Instead of shareholders, a nonprofit corporation may, but is not required to, have members. Nonprofit corporations, of course, are specifically organized to not earn profits. No part of the income or surplus of a Montana non-profit corporation may be distributed to members, directors or officers; however, reasonable compensation may be paid for services rendered.

A nonprofit corporation has an existence of its own, independent of the terms of office or employment of members, directors or officers. Under Mont. Code Ann. § 35-2-118, a nonprofit corporation has the same powers as an individual to do all things necessary or convenient to carry out its affairs. The nonprofit may sue or be sued in its own name and own real estate and other personal property. Additionally, it may sell, mortgage, or otherwise dispose of all or any part of its property. The only limitation is that the nonprofit corporation may not have or issue shares of stock.

Advantages and Disadvantages: Pros and Cons of Nonprofit vs. For-profit

The principal advantage of incorporation is that it protects the shareholders or members from personal liability for the obligations and liabilities of the corporation, including unlawful actions of officers, directors and staff acting on its behalf. In addition, incorporation establishes continuity; corporations (both nonprofit and for-profit) are subject to a body of statutes that provide very specific guidance as to their formation and operation; and incorporation brings stature to the organization and implies stability.

Where profit is not a goal and the enterprise can be funded without the need for access to capital markets, the nonprofit corporation is the preferred vehicle for pursuing social objectives. Although nonprofit corporations are not prohibited from engaging in commercial activities, the directors of a nonprofit are duty-bound to devote primary attention to the promotion of the social mission of the corporation rather than the production of net income.

On the other hand, if access to capital markets is needed, a for-profit corporation (or limited liability company, discussed [here](#)) is likely to be the preferred option because nonprofit corporations cannot issue capital stock. The directors of a for profit corporation, however, owe strict duties to the shareholders to maximize profits and value. Therefore, unless the directors and managers can tie the social mission of their for-profit corporation directly to its business purpose, they can be sued for breach of their duties to shareholders and for misuse of corporate assets if they focus too much on the social mission and forego profits. This problem can be avoided where all shareholders agree to pursue a social mission or devote a percentage of revenues to charitable causes but such agreements may be temporary. A change in control—or a drop in earnings—can lead to amendment or abrogation of shareholder agreements.

Formation

In order to form a nonprofit corporation, a person must file, and the State of Montana must approve the corporation's articles of incorporation. This document is in essence a contract between the state and the nonprofit corporation in which Montana grants individual legal status to the corporation in exchange for the corporation's commitment to follow its rules.

Incorporation

The corporate existence begins when the articles of incorporation are filed by the secretary of state. The Secretary of State requires a fee of \$20 when filing the articles of incorporation. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

Under Montana law, a nonprofit corporation must select from three different types of corporations. Section 35-2-126 of the Montana Code Annotated requires that an organization must be designated as a mutual benefit, public benefit, or religious corporation. A foreign corporation, or a corporation organized under the laws of a state other than Montana, must be designated as a foreign public benefit, a foreign mutual benefit corporation, or a foreign religious organization.

Articles of Incorporation

The Montana Nonprofit Corporation Act addresses the requirements of articles of incorporation:

The articles of incorporation must include:

- A corporate name that satisfies the requirements of § 35-2-305
- A statement that the corporation is a public benefit corporation; the corporation is a mutual benefit corporation; or the corporation is a religious corporation
- The name and address of the corporation's registered agent

- The name and address of each incorporator
- Whether or not the nonprofit corporation will have members and
- Provisions consistent with law regarding the distribution of assets on dissolution.

The Articles of incorporation are not required to include, but may set forth provisions:

- Stating the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity
- Stating the names and addresses of the individuals who are to serve as the initial directors
- Managing and regulating the affairs of the corporation
- Defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members
- The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members
- Any provision that is required or permitted to be set forth in the bylaws
- Provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of the director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director for breach of the duty of loyalty, for acts of bad faith or intentional misconduct, or knowing violation of the law, or from a transaction from which a director derived an improper personal economic benefit or from a conflict.

i) Articles of Incorporation for Domestic Nonprofit Corporations

http://sos.mt.gov/Business/Forms/Nonprofit/Domestic/54-Domestic_Nonprofit_Corporation_Articles_of_Incorporation.pdf

ii) Articles of Incorporation for Domestic Nonprofit Religious Corporations

http://sos.mt.gov/Business/Forms/Nonprofit/Domestic/55-Articles_of_Inc_for_Domestic_Religious_Corp.pdf

For additional information, contact:

Office of the Attorney General

P.O. Box 201401

Helena, MT 59620-1401

Phone: (406) 444-2026

Fax: (406) 444-3549

E-mail: contactdoj@mt.gov

Management and Control

Each corporation must have a board of directors. Boards of nonprofit corporations are sometimes called boards of trustees, regents, overseers, or by some other name. In Montana, the board of directors must consist of three or more individuals, with the specific number described in the articles or bylaws. The number of directors may be increased or decreased by amendment, but may not be fewer than three.

Nonprofit corporations are managed by the board of directors and all corporate powers are exercised by or under the authority of the board. Once the nonprofit corporation has been established, the initial board of directors should meet (in person/by consent) to ratify the acts in connection with the initial formation of the corporation. Additionally, the board should adopt bylaws which set forth the rules and procedures governing the decision-making process of the board of directors and the general operation and management of the corporation consistent with applicable statutes of Montana and the articles of incorporation.

Typically, the bylaws of a nonprofit corporation contain provisions governing member, director and officer qualifications, powers, and duties; voting; filling of vacancies; meetings; property holding and transfer; indemnification of directors and officers; committees; bank accounts; fiscal year audits and financial reports; conflicts of interest; and amendment and dissolution procedures.

A corporation is usually managed by the directors who appoint officers to run the day-to-day operations. Unless otherwise provided in the articles of incorporation or bylaws, a corporation has a president, a secretary, a treasurer, and any other officers appointed by the board. Officers have the authority to perform the duties set forth in the bylaws, resolutions from the board, or by direction from an officer authorized by the board to prescribe duties.

Sample Nonprofit Bylaws:

<http://mtnonprofit.org/uploadedFiles/Files/About/Bylaws7-25-07.pdf>

Liability of Members, Directors and Officers

The articles of incorporation may include a provision eliminating or limiting a director's personal liability to the corporation and/or its members for monetary damages for the breach of a director's duties to the corporation and/or its members. However, the articles cannot eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its member, for intentional misconduct or knowing violations of the law, or for transactions from which a director derived an improper personal economic benefit. A member of a corporation is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the corporation.

There are however, certain situations where the corporation may indemnify the director, officer or agent of the corporation. An individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if the individual engaged in good faith conduct, and reasonably believed that the conduct was in the corporation's best interests. In the case of a criminal proceeding, the corporation may indemnify the director if the individual had no reasonable cause to believe the conduct was unlawful. However, the corporation may not indemnify a director if the director was also liable to the corporation in any other proceeding or in situations where the director received improper benefit from the corporation.

Under Montana law, a corporation, unless limited by its articles, must indemnify a director or an officer who was wholly successful in defending any proceeding in which the director was a party because the individual is or was a director of the corporation.

Mergers, Acquisitions and Dissolution

Part 6 of the Montana Nonprofit Corporation Act governs mergers. Generally, one or more nonprofit corporations may merge into a business or nonprofit corporation. Unless the articles, bylaws, or the board of directors or members require a greater vote or voting by a class to be adopted, the plan of merger must be approved by the board, the members, and in writing by any person whose approval is required by a provision of the articles. If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time.

While one or more nonprofits may ordinarily merge into a business or nonprofit corporation, a public benefit corporation or a religious corporation may merge only with a public benefit corporation or religious corporation. A public benefit corporation or religious corporation may merge with a business or mutual benefit corporation if the requirements of Mont. Code Ann. § 35-2-609 are met.

If a nonprofit corporation does not have members, a majority of the incorporators or directors of a corporation may dissolve the corporation by delivering articles of dissolution to the state. The incorporators or directors shall adopt a plan of dissolution indicating to whom the assets owned or held

by the nonprofit corporation will be distributed. The articles of dissolution must provide the name of the corporation, the date dissolution was authorized, and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators. If approval by members is required, the articles of dissolution must provide the designation and number of votes outstanding, either the total number of votes entitled to be cast by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class, and a statement that the number cast for dissolution by each class was sufficient for approval.

Recordkeeping and State Reports

All nonprofit corporations must deliver to the secretary of state an annual report on a form prescribed and furnished by the secretary of state that sets forth:

- The name of the corporation and jurisdiction under whose law it is incorporated
- Name and address of the registered agent
- The address of its principal office, wherever located
- The names and business or residence addresses of its directors and principal officers
- A brief description of the nature of its activities and
- Whether or not it has members

Additionally, a corporation shall keep as a permanent record minutes of all meetings of its members and its board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board. The corporation must maintain appropriate accounting records and a record of its members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

Insurance

Nearly every type of activity by a nonprofit corporation can become the target of some kind of a claim by a firm or an individual that alleges damage or injury by the corporation or individuals responsible for it (i.e., directors, officers or employees). Even if the claim is without merit, the costs of defending against the claim can be very substantial.

To encourage qualified individuals to accept positions as directors and officers, many nonprofit corporations purchase insurance to cover director and officer (D&O) liability. In addition, most responsible nonprofit corporations purchase a basic comprehensive general liability policy that covers liability for accidents in the corporation's offices, at sponsored meetings and the like. Any entity that has employees should also obtain workers' compensation insurance.

Liability insurance for nonprofit corporations is often a very complicated matter. Consultation with an experienced and knowledgeable agent or consultant is essential in order to obtain the right coverage at the lowest premium.

Taxes

If the nonprofit corporation intends to obtain exemption from federal and state income taxation, the articles of incorporation must conform with applicable statutes and regulations. A nonprofit must file for nonprofit tax exempt certification through the Montana Department of Revenue. Additionally, a nonprofit must file a Form 1023 with the Internal Revenue Service to be recognized as tax exempt under Federal law as a 501(c)(3) organization.

Language required for 501(c)(3) status: <http://sos.mt.gov/Business/Forms/General/501C3.pdf>

Resources

- Montana Secretary of State Nonprofit Site,

<http://sos.mt.gov/Business/Models/index.asp#Corporation>

- Montana Secretary of State Website, Business Models and Organizational Structures, Montana Secretary of State's Website
- Oleck and Stewart, Nonprofit Corporations, Organizations & Associations (Prentice-Hall, 1994, Cum. Supp. 2002)
- Jacobs, Jerald A., Association Law Handbook (ASAE & The Center for Association Leadership 4th ed., 2007)
- Nonprofit Governance and Management (American Bar Association and American Society of Corporate Secretaries, 2002)
- Montana Nonprofit Association, retrieved online from <http://www.mtnonprofit.org/content.aspx?id=838>
- Guide to Nonprofit Corporate Governance in the Wake of Sarbanes-Oxley (American Bar Association Section of Business Law, 2005)
- Guidebook for Directors of Nonprofit Corporations (American Bar Association Section of Business Law 2d ed., 2002)
- IRS Guide to Tax-exempt Status for Your Corporation, <http://www.irs.gov/pub/irs-pdf/p557.pdf>
- For information regarding Federal Tax exemption, visit the IRS Website, Tax Information for Charities & Other Nonprofits

*This article is provided for informational purposes only, and should not be construed as legal advice or opinion. This overview does not provide a complete and up-to-date analysis of all potentially applicable law concerning forms of organizations in Montana and the U.S. You should not act upon this information without specific legal advice from an attorney based on your particular situation.

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MONTANA SECRETARY OF STATE BRAD
Business Entity
 Instructions Search Tips

 Data Current as of...

If you are ordering a Certificate of Fact or Certificate of Existence, please make sure the Foreign/Do Corporation or Limited Liability Company is in "Good Standing".
Enter the name of the business, and check to see whether their annual report was filed in 2005.

We are not able to provide a Certificate of Fact or Certificate of Existence unless the current annual filed.

Name: MOUNTAINVIEW MEDICAL CENTER, INC.
ID #: D023917
Type: PUBLIC BENEFIT WITHOUT MEMBERS
Jurisdiction State: MT
Status: ACTIVE
Status Reason: GOOD STANDING

*Ad Rules of Montana
 Health Facility 37, 106, 134
 (L)(D)(E)*

Status Dates

Expiration Date:
Date of Incorporation: 04/23/1952
Last AR Filed: 02/01/2006
Suspension:
Inactive Date:
Diss/Widthdr/Revoke:

*37-106, 137
 annual operation Report
 by Hospitals
 JCAH accreditation*

Additional Info

Term: PERP
Shares:
Purpose Code: MEDICAL,HOSPITAL,NURSING FACILITY

Agent

Registered Agent: KATHARINE ANN CAMPBELL
Address 1: 16 W. MAIN
Address 2: BOX Q
City: WHITE SULPHUR SPRINGS
State: MT
Zip: 59645-0000

If you would like to purchase a Certificate of Existence for this business entity, select the button below. You will be assessed a \$5.00 fee for this service. (This fee consists of a \$3.00 certificate fee and a \$2.00 processing fee.)
 If you would like to purchase a Certificate of Fact for this business entity, select the button below. You will be assessed a \$15.00 fee for this service. (This fee consists of a \$3.00 certificate fee and a \$12.00 processing fee.)



Administrative Rules of Montana

Updated Through June 3

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Montana Code Annotated

Secretary of

HEALTH CARE FACILITIES 37.106.137

37.106.137 ANNUAL OPERATIONAL REPORTS BY HOSPITALS

(1) Every hospital shall submit an annual report to the department on a form provided by the department and no later than the deadline specified on the form. The annual reports must be signed by the hospital administrator and must include whichever of the following information is requested on the form:

(a) whether the hospital has received JCAH accreditation, and if so, for what period;

(b) beginning and ending dates of the hospital's reporting period, and whether the facility has been in operation for 12 full months at the end of the most recent reporting period;

(c) a discussion of the organizational aspects of the facility, including the following information:

(i) the type of organization or entity responsible for the day-to-day operation of the hospital (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation);

(ii) whether the controlling organization leases the physical plant from another organization, and if so, the name and type of organization that owns the plant;

(iii) any changes in the ownership, board of directors or articles of incorporation during the past year;

(iv) the name of the current chairman of the board of directors;

(v) if the controlling organization has placed responsibility for the administration of the hospital with another organization, the name and type of organization that manages the facility. ✓ A copy of the latest management agreement must be provided;

(vi) if the hospital is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization;

(d) whether the hospital provides primarily general medical/surgical services, or specialty services (specify);

(e) specific facilities and services provided by the hospital, bed capacities for each service (where applicable), and whether such services are provided full or part-time, by hospital personnel, or by

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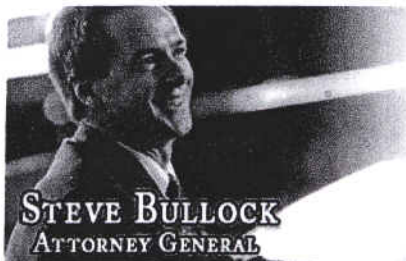
(v) if the controlling organization has placed responsibility for the administration of the hospital with another organization, the name and type of organization that manages the facility. A copy of the latest management agreement must be provided;

(vi) if the hospital is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization;

(d) whether the hospital provides primarily general medical/surgical services, or specialty services (specify);

(e) specific facilities and services provided by the hospital, bed capacities for each service (where applicable), and whether such services are provided full or part-time, by hospital personnel, or by contracting providers;

- (f) newborn nursery statistics, including:
 - (i) number of bassinets set up and staffed;
 - (ii) total number of births;
 - (iii) total new born days;
 - (iv) neonatal intensive care admissions and inpatient days;
- (g) surgery statistics, including:
 - (i) number of inpatient and outpatient surgery suites;
 - (ii) number of inpatient and outpatient operations performed;
 - (iii) number of adult and pediatric open-heart surgical operations performed;
 - (iv) total adult and pediatric cardiac catheterization and intracardiac and/or coronary artery procedures;
 - (h) number of beds set up and staffed and total inpatient days (excluding newborns) in each basic inpatient service category;
 - (i) inpatient statistics, including:
 - (i) number of licensed hospital beds (excluding bassinets and long-term care beds);
 - (ii) number of admissions (excluding newborns);
 - (iii) number of discharges (including deaths);
 - (iv) number of deaths (excluding fetal deaths);
 - (v) census on last day of reporting period (excluding newborns);
 - (j) information on other services, including number of rooms or units, number of inpatient and outpatient procedures, and number of outpatient visits in at least the following areas:
 - (i) emergency room;
 - (ii) organized outpatient department;
 - (iii) x-ray, ultrasound, nuclear medicine, cobalt therapy, CT scans;
 - (iv) physical therapy;
 - (v) respiratory therapy;
 - (vi) renal dialysis;
 - (vii) other ancillary services;
 - (k) information on changes in total number of beds during the reporting period;
 - (l) whether there is a separate long-term care unit, and if so, how many beds;



Office of Consumer Protection

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Montana Department of Justice - Consumer Protection

For Nonprofits

Charitable organizations serve and strengthen Montana communities through their contributions to health, the environment, education, spiritual development, research, the arts and human services.

The attorney general, as the state's chief law enforcement officer, has authority to supervise charitable organizations and plays an important role in ensuring that all Montanans continue to benefit from the services they provide. Montana law does not require charities operating in the state to register with the Attorney General's Office. However, charities that solicit contributions through telemarketing must comply with Montana's [telemarketing laws](#).

The following information is provided to help charities operating in Montana comply with state regulations.

Nonprofit Corporations

Nonprofit corporations are created to support charitable, religious, educational, scientific or artistic endeavors. Unlike for-profit corporations, nonprofits:

- must be permanently dedicated to an [exempt purpose](#) as defined by the Internal Revenue Service, and
- may not distribute profits to any [corporate member](#).

In Montana, the [Montana Nonprofit Corporation Act](#) governs the organization and operation of nonprofit corporations. [Section 35-2-126](#) of the Montana Code Annotated (MCA) requires that an organization **must be designated as a mutual benefit, public benefit or religious corporation**, as determined by the articles of incorporation filed with the [Secretary of State's Office](#).

- **Public Benefit Corporations** such as civic and community groups, foundations and other charities serve the public and may have members. A public benefit corporation operates for public or charitable purposes, and members may not sell their interests or receive dividends from the organization.
- **Mutual Benefit Corporations** such as private clubs or associations serve their members. Examples include trade associations, social clubs and fraternal organizations. Members are not entitled to receive dividends while the organization is operating, but they are entitled to sell their memberships and receive income or assets should the organization dissolve. [Section 35-2-725](#), MCA.
- **Religious Corporations** such as some churches and religious orders, serve religious purposes and may not have members. The IRS provides useful [tax-related information](#) for religious organizations.

Important Provisions of the Montana Nonprofit Corporation Act

General Duties of Directors and Officers. The duties of nonprofit directors include:

- acting in good faith, prudently and in the best interests of the corporation. [Section 35-2-416](#), MCA.
- avoiding conflicts of interest. In some instances, this may require taking specific steps to avoid a conflict, including obtaining the attorney general's approval of a transaction when directors are unable to do so without a conflict. [Section 35-2-418](#), MCA.

Officers also must act for the corporation in good faith, prudently and with the best interest of the corporation in mind. [Section 35-2-441](#), MCA.

Disclosure of Corporate Records to Members. A nonprofit corporation must keep records of its meetings, finances and membership. [Section 35-2-906](#), MCA. Upon request, a nonprofit corporation must make certain of those records available to members. [Section 35-2-907](#), MCA.

Public Information. Nonprofit corporations with 501(c)(3) status must make their tax returns and tax exemption information available to the public in accordance with [IRS public disclosure requirements](#). Nonprofit tax returns are available online through sites such as [GuideStar](#).

Annual Report. All nonprofits, regardless of designation, must file an [annual report](#) with the Secretary of State's Office. Annual reports need not be filed with the attorney general. [Section 35-2-904](#), MCA.

Mergers. Public benefit and religious corporations frequently determine that their interests and those of their beneficiaries are better served by merging with another similar corporation. In that event, they must notify the attorney general of the planned merger. Court approval is not required if the attorney general has been properly notified. [Section 35-2-609](#), MCA.

- **Nonprofit Health Corporation Conversions.** Nonprofit health entities such as hospitals and insurers are subject to the provisions of [Title 50, Chapter 4, Part 7](#), MCA. They may not convert their organization or their assets to for-profit status without prior approval from the attorney general and the insurance commissioner, and must take certain steps to protect public benefit assets.

Disposal of Assets or Property. Public benefit and religious corporations must provide written notice to the attorney general 20 days before the organization in any way disposes of all or substantially all of its property. This allows the attorney general to review the proposed transfer or disposal, address any issues and commence any necessary court proceedings. [Section 35-2-617\(7\)\(a\)](#), MCA.

Dissolution. Public benefit and religious corporations must submit a completed [Notice of Dissolution](#) form to the attorney general if the organization intends to dissolve. The Notice of Dissolution must:

- be given to the attorney general at or before the time the company files [articles of dissolution](#) with the secretary of state, and

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[Charitable Trusts](#)
[Consumer Protection Contacts](#)
[Consumer Alerts](#)
[Hospital Alerts](#)
[Montana Nonprofit Association](#)
[Nonprofit Corporations](#)
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- include a summary of the organization's plan for dissolution, describing the organization's assets and explaining where they will go upon dissolution.

The attorney general reviews the plan to ensure that company assets are transferred to another public benefit or religious corporation in accordance with Section 501(c)(3) of the Internal Revenue Code. Corporation assets cannot be transferred or conveyed for at least 20 days unless the attorney general has waived the notification requirements. [Section 35-2-722](#), MCA. See [Section 35-2-725](#), MCA or [IRS exemption requirements](#) for additional information.

Mutual benefit corporations that intend to dissolve should consult [Section 35-2-725](#), MCA for important information about distributing or transferring assets.

✓ **Attorney General Enforcement Actions.** Nonprofit corporations are required to notify the attorney general of any legal actions taken either against them or on their behalf under the Nonprofit Corporation Act. The act authorizes the attorney general to intervene in such legal proceedings or to initiate them to enforce Montana law. [Section 35-2-131](#), MCA.

- **Dissolution by the Attorney General.** The attorney general also can initiate legal action to dissolve a public benefit or religious corporation that breaks the law by, for example, wasting or misusing corporate funds. [Section 35-2-728](#), MCA.

Charitable Trusts

Charitable trusts are created for a variety of charitable purposes that benefit the public, including relief of poverty, advancing education and religion, promoting health, governmental purposes, and other objectives that benefit the general public. [Sections 72-33-501](#) and [72-33-502](#), MCA.

State law relating to oversight of charitable trusts and prohibitions on certain activities are outlined in [Title 72, Chapters 33-36](#), MCA, and are summarized below.

Important Provisions of the Trust Code

General Duties of Trustees. Trustees have a duty to:

- administer the trust solely in the interest of the [beneficiaries](#). [Section 72-34-103](#), MCA.
- keep the beneficiaries of the trust reasonably informed of the trust and its administration. [Section 72-34-124](#), MCA.

The attorney general is considered a beneficiary for purposes of charitable oversight. [Section 72-33-108\(1\)](#), MCA.

Prohibited Conduct. Trustees are prohibited from:

- engaging in self-dealing
- retaining excess business holdings
- making any investments that would subject trust property to tax
- making any taxable expenditure

For additional information on prohibited conduct and duties, see [Sections 72-34-203](#) and [72-34-105](#), MCA.

Duty to Report. Charitable trusts must provide, on reasonable request by a beneficiary of the trust or the attorney general, a report that includes information about the assets, liabilities, receipts and disbursements of the trust. Trustees may also be required to provide information about acts of the trustees as well as details relating to its administration. [Section 72-34-125](#), MCA.

Oversight Authority of Attorney General. As Montana's chief law enforcement officer, the attorney general protects the interests of the state's public beneficiaries. The attorney general may bring legal action to ensure that trust assets are properly distributed and that its charitable purpose is carried out. [Sections 72-35-315](#) and [72-33-503](#), MCA.

Change-of-Purpose Proceedings. If it becomes apparent that a trust's charitable purpose can no longer be carried out because it is impossible, impracticable or illegal to do so, the trustees or the attorney general may apply to the court to redirect the trust's assets to another charitable purpose. That purpose must be in keeping with the trust's goals. [Section 72-33-504](#), MCA. The attorney general is a necessary party to the change-of-purpose proceedings. [Section 72-33-108\(1\)](#), MCA.

Contact the [Office of Consumer Protection](#) for more information.

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Private agency, public dollars-Montana

Recent news

Statutes

The Montana Public Records Act does not mention private agencies or non-profits. However the Montana Open Meetings Law includes in its definition of public bodies "agencies supported in whole or in part by public funds or expending public funds" and the constitution of Montana guarantees the right of inspection of all public bodies records.^[1]

References

1. ↑ 1.0 1.1 Montana Statute 2.3.203
2. ↑ Common Cause v. Statutory Committee

Litigation

For a full list, see Court cases with an impact on state FOIA, Private companies subject to public records requests.

Here is a list of "Private companies subject to public records requests" litigation for Montana:

Bryan v. Yellowstone County Elementary School District No. 2

Bryan v. Yellowstone County Elementary School District No. 2, 312 Mont. 257, 60 P.3d 381 (Mont. 2002).

This case established a number of important precedents:

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Montana

Common Definition Themes

These 5 characteristics tend to recur in most state definitions for private agencies which are subject to FOIA laws.

- 1.) Receive or dispense public funds: ✓ [1]
- 2.) Created by a public agency: ✗
- 3.) Present themselves as a public entity: ✗
- 4.) Perform a public function: ✓ [2]
- 5.) Controlled or managed by a public entity: ✗

Key:

✗ =The legal history does not mention this characteristic or it has rejected this characteristic as a potential defining aspect.

✓ =This characteristic alone is sufficient to bring an organization under the FOIA.

x=This is a part of a compound definition requiring multiple characteristics. The numbers after the symbol indicate the additional requirements.

+w=This is a characteristic that has been mentioned within the legal history and may aid in deciding whether or not the FOIA law applies to an organization but is not a part of a specific definition.

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2010

Sorted by State, Year and Topic

Sunshine Litigation

Sorted by State, Year and Topic

Sunshine Nuances

1. Advisory boards, created to serve a public purpose, are public bodies subject to the Montana Public Records Act.
2. Decision-making processes which are directly affected by violations of the right to know/participate can be voided by court action.^[1]

Private Agencies, Public Dollars
Deliberative Process Exemption

Common Cause v. Statutory Committee

Common Cause v. Statutory Committee, 868 P.2d 604 (Mont. 1994).

This case established the definition of public body as "a group of individuals organized for a governmental or public purpose."^[2]

Great Falls Tribune Co. Inc. v. Day

Great Falls Tribune Co. Inc. v. Day, 289 Mont 155, 959 P.2d 508 (Mont. 1998).

This case established that bid proposals could not remain sealed because neither the corporation nor the public body held any reasonable expectation of privacy.^[3]

Legislation

We do not currently have any Private agencies legislation legislation for Montana in 2010. To add some, please see WikiProject Proposed state sunshine legislation.

See also

- Private agency, public dollars
- Montana Public Records Act

External links

Retrieved from "http://sunshinereview.org/index.php/Private_agency,_public_dollars-Montana"
Categories: WikiFOIA | Montana | Private agency, public dollars

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County Mill Levy Q & A'

Why does MMC need the 20 additional mills?

The budget for the current year (July 07-June 08) has a projected deficit of \$264,000. MMC has reduced expenses as much as possible through reductions of 15 staff positions last spring and elimination of unnecessary expenses. MMC reviewed its rates for hospital and clinic charges and increased rates where they were less than market. However the increase in revenue and the decrease in expenses were not enough to balance the budget for the current year. MMC still needs to raise an additional \$264,000 to balance the current budget.

How much money will 20 additional mills raise?

Twenty additional mills will raise approximately \$150,000.

How much will the mill levy cost me?

Below is a table that you can use to compare the estimated "market value" (not taxable value) of your home to the estimated tax you would pay each year.

Market Value	Tax
\$ 30,000	\$ 18.43
\$ 50,000	\$ 30.70
\$ 80,000	\$ 49.12
\$100,000	\$ 61.41
\$200,000	\$122.80

Ranchers and commercial businesses should check with the County Treasurer to determine their estimated tax assessment.

How long will the 20 additional mills be assessed?

The levy, if authorized, will remain in effect for a two year period of time.

What has MMC done to improve its financial situation?

MMC eliminated 15 positions last spring in administration, billing, education, maintenance, medical records, and public relations. MMC also reduced hours in the following departments: billing, medical records, environmental services, dietary, maintenance, and activities. MMC vacated the CFO position, and reduced the wages and benefits paid for the CEO position. MMC eliminated unnecessary expenses, increased rates for hospital and clinic services, and is actively fund raising in Meagher County as well as contacting folks outside the county. Finally, we are requesting the residents of Meagher County support the hospital and clinic by assessing an additional 20 mills on their property.

What has MMC done to pay off its vendor debt/bills?

When MMC hospital administration and board membership changed in February 2007, the vendor debt was \$530,581 which includes all amounts owed to Benefis. At the end of August 2007 the total debt was \$379,193 which represents a decrease of \$151,388. The outstanding balance of \$379,193 included \$345,279 owed to Benefis.

How is MMC's cash flow doing?

MMC's cash flow has stabilized over the last six months due to generous gift from an anonymous donor allowing MMC to have a line of credit at Bank of the Rockies. The line of credit is \$150,000 and can only be used for payroll shortfalls. MMC has used the line of credit to cover 8 of 13 payrolls in the last 6 months. The smallest amount borrowed was \$40,000 and the largest amount borrowed was \$85,000. MMC's payroll costs are approximately \$94,000 every two weeks. The current outstanding balance on the line of credit is \$0.

Are MMC's financial records in order?

Yes. MMC's financial records are maintained by the Accounting Manager who has a BS in Administration with emphasis in Accounting and 18 years of experience. The financial statements are prepared by Jan Kalgaard, CPA. Ms. Kalgaard has been a Certified Public Accountant since 1984 and has over 25 years of accounting experience.

Each year MMC is audited by an independent audit firm. Douglas Wilson and Company from Great Falls has performed the audit function for the past eight years. According to Mr. Wilson, CPA, the accuracy of the accounting records has greatly improved and that internal controls are effective. Mr. Wilson's complete audit report should be ready in December 2007 or January 2008. A copy of the audit can be requested from MMC's Administrative office.

Can members of the community view the financial statements of MMC?

Yes. Members of the community can pick up a copy of the current monthly financial statements from the Administrative offices of MMC. Additionally, each month the Meagher County News receives a full copy of the financial packet presented at each board meeting.

Why finance the shortfall with a mill levy?

Patient revenue is not sufficient to cover operating expenses at MMC. The small population base in Meagher County (approximately 2,000 residents) does not provide sufficient patient volume for MMC to operate efficiently.

A mill levy spreads the cost of the budget shortfall over a large group of county residents making the cost per resident fairly small. Those residents benefit *directly* and *indirectly* from the 24 hours per day, seven days a week availability of MMC's emergency room, hospital services and the 5 day per week clinic.

What is inefficient at MMC?

Maintaining an emergency room is inefficient, yet very important to the residents and visitors of Meagher County. MMC is expected to have approximately 500 emergency room visits this year. That amounts to 1.4 ER visits per day. However, MMC must have staff "in the building" or "on-call" in order to meet the needs of ER patients when the emergency arises. MMC has the following positions covered either by a staff member "in the building" or "on call" 24 hours per day, seven days per week to meet the emergency needs of patients: Physician and/or Physician Assistant, Registered Nurse, Lab Technician and X-Ray Technician. While this system is not efficient given the number of ER patients, MMC improves efficiency by offering other services (hospital in-patient and outpatient services, clinic Monday – Friday and nursing services) provided by the same team of staff members.

Does MMC deliver effective healthcare?

Yes. The highly trained direct care staff save lives and provide quality care every day. Dr. Steinberg has said:

"We have saved the lives of Meagher County residents and visitors in every month of the past 13 years that the current medical staff has worked here. Our well trained team of nurses, medical staff and lab and x-ray technologists understands that our primary function is to prevent unnecessary deaths and complications that would occur if patients could only go to more distant sites for emergency healthcare."

Supporting the mill levy will help keep MMC's emergency room open to care for you and your family.

¹ Prepared by Jan Kalgaard, Interim CEO on 10/2/2007– Ms. Kalgaard is a Certified Public Accountant with 23 years of experience, with nine (9) years directly related to hospital finance.

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Disclosing Financial Records as Nonprofit Corporation

Nonprofits forced to be open books

QUESTION:

I work for a 501(c)(3) nonprofit corporation. Are its financial statements available for public view -- especially regarding management salaries?

ANSWER:

Indeed. Nonprofits are required to submit their financial statements and other information -- including the salaries of directors, officers and key employees -- to the IRS. For information on who is considered a key employee, see IRS Form 990 and its instructions. The IRS and the nonprofits themselves are required to disclose this information to anyone who asks.

If it's you who is doing the sleuthwork here, your request to the IRS should include the name of the organization, the year and the type of return requested and should be submitted in writing to:

Commissioner of Internal Revenue
Attn: Freedom of Information Reading Room
1111 Constitution Avenue, NW
Washington, DC 20224

Nonprofits must allow public inspection of these records during regular business hours at their principal offices.

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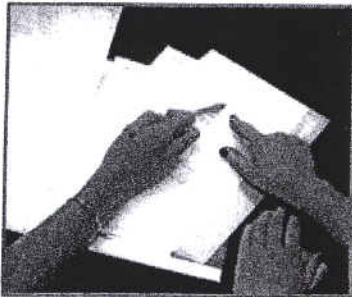
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Ultra Vires Acts: Why Nonprofits Must Follow Their Articles & Bylaws

Written on July 14, 2010 by [Ellis Carter](#)

From time to time, themes emerge in my practice. Lately, a recurring question has been why does a nonprofit corporation have to follow its articles and bylaws. Yes really. While its true that the sky won't fall and you won't necessarily be arrested on the spot, there are number of unsavory consequences that can flow from a decision to take action that is in conflict with a nonprofit's articles and/or bylaws.

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First, there is a doctrine called ultra vires. It is a Latin term that essentially means that acts outside the permissible scope of authority set forth in the governing documents is unauthorized activity that cannot be ratified by the board. As an example, if a nonprofit enters into a contract that is outside the scope of its permissible activities, the contract could be voided. While there may be other arguments that could be raised to enforce an ultra vires contract, acting "ultra vires" puts the nonprofit at risk as well as those that are entering into transactions with it.

Second, if directors act in ways that conflict with the nonprofit's governing documents, they may be opening themselves up to an argument that they are breaching their fiduciary duties including the duty of due care and the duty of obedience. In most states, fulfilling one's fiduciary duties is a prerequisite to a statute that basically says the board members can't be held personally liable for their mistakes so long as the mistakes were made in good faith, out of loyalty and obedience to the corporation, and with due care. By failing to fulfill their fiduciary duties, the directors risk personal liability for any harm caused by their actions.

Third, if the directors are ignoring the rights of the nonprofit corporation, most states have a process that permits a group of directors (or voting members in a membership corporation) to get together to bring a derivative suit on behalf of the corporation. In the nonprofit context, a derivative suit is a law suit brought by a group of directors or members against a third party. That third party can be another insider such as another director or group of directors. These suits are brought from time to time when relations break down and factions form on the board of a nonprofit.

Fourth, the typical saviors for wayward nonprofit officers and directors, D&O insurance and corporate indemnification, won't save directors who act outside the scope of their authority. D&O policies typically exclude ultra vires acts from coverage and corporate indemnification is generally not available to those acting outside the scope of their authority.

Officers and directors of nonprofit corporations who ignore the nonprofit's articles of incorporation and bylaws are setting themselves up to be on the losing side of a lawsuit that could hold them personally liable for the consequences.

More Nonprofit and Charity Law Jargon Busters...

[Private Foundation v. Public Charity](#)

[Private Inurement v. Private Benefit](#)

[Tax-exempt Purpose](#)

Tuesday
September 14, 2010
8:30am – 4:00pm
Met in Commissioner's Chambers

Commissioners Present:

Chairman Herb Townsend, Vice Chairman Ben Hurwitz, Commissioner Nancy Schlepp.

Meeting Called to Order:

Chairman Herb Townsend called meeting to order 8:45am.

Minutes:

Commissioners approved September 7, 2010 minutes with changes.

Claims:

Deputy Clerk and Recorder Becky Hurwitz Leger presented claims for review.

County Hospital District:

Pam Sundstrom, Michael Kakuk, and John Dracon met with commission to discuss county hospital district. Chairman Townsend explained the county is reactivating the board and that the duties are explained in the law. Commission would like to include the community and find out what their opinion of the hospital. Commission would like the hospital to be successful and sustainable, and track how the county taxes are spent. County is responsible for the taxes and is following what the community wants. Appointed Hospital District Board Members will serve until the election is held at the school election in 2011. H.D. Board members will have to decide on offices at their first meeting. H.D. Board members shared their desire to serve and possible changes to improve hospital. The consensus was to be unified and work together to help the hospital be successful. H.D. Board agreed to go to the hospital board meetings and understood they would not have a vote. H.D. Board would like to hold a public meeting to hear public opinion. Commission asked if H.D. Board would identify problems the community has with the hospital and have solutions.

Action 1:

Commissioner Hurwitz moved to appoint Pam Sundstrom, Michael Kakuk, and John Dracon to the hospital district board until the next election that will be held in May at the School Election. Commissioner Schlepp seconded. A vote was taken and passed unanimously.

Russell Country Board:

Action 2:

Chairman Townsend moved to appoint Melinda Venard to the Russell Country Board for another 3 year term. Commissioner Hurwitz seconded. A vote was taken and passed unanimously.

Fire Report:

Fire Chief Rick Seidlitz met with commissioners and handed out his department report. The 5 ton truck's equipment has been ordered and will be mounted when it comes in. Commission discussed Antelope in the Airport fenced area. They would like everyone to keep the gate closed.

Weed Report:

Weed Supervisor Otto Ohlson met with commission and discussed weed spraying in the county. Commission talked to Ohlson regarding the Weed Departments budget, and the expending and receipting of grant monies. Ohlson asked if the commission would give permission to sale the 2008 Ranger. Commission gave permission. Commission decided to move cash balance that is in a grant fund to a capital outlay fund. Mrs. Ogle will check with the auditors to find out the proper procedure to transfer funds.

Claims:

Deputy Clerk and Recorder Becky Hurwitz Leger presented claims Voucher #1107 CK #41315 – CK#41348 totaling \$11,743.93, Commissioners signed as presented.

Chairman Townsend approved Voucher #1108 CK#41349 totaling \$377.00 out of session.

Meeting Adjourned

Chairman Herb Townsend adjourned meeting at 4:05pm.


Next Meeting:


Commissioners are scheduled to meet next Tuesday, September 21, 2010.

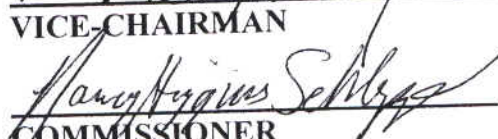


CLERK & RECORDER

SEAL



CHAIRMAN


VICE-CHAIRMAN


COMMISSIONER

Note: Minutes taken by Christy Rogers, Administrative Assistant
Distributed September 21, 2010 to Chairman Townsend, Commissioner Hurwitz, Commissioner Schlep, and Clerk & Recorder Ogle