

49 Op. Att'y Gen. No. 6

STATUTORY CONSTRUCTION - Construing section consistently with its title;
STATUTORY CONSTRUCTION - Express inclusion implying exclusion of matters not mentioned;
STATUTORY CONSTRUCTION - Liberal construction of consumer protection legislation;
STATUTORY CONSTRUCTION - Plain meaning controls;
STATUTORY CONSTRUCTION - Resort to principles of construction when meaning plain;
TELEMARKETING - Application of statutory regulations to telemarketers exempt from registration and bonding requirements;
MONTANA CODE ANNOTATED - Title 30, chapter 14, part 14; sections 30-14-1402, -1403 to -1405, -1408, -1410 to -1412.

HELD:

Telemarketers who are exempt from the registration and bonding requirements of the Montana Telemarketing Registration and Fraud Prevention Act are not exempt from other provisions of the Act.

August 9, 2001

Ms. Barbara Ranf
Director
Department of Administration
P.O. Box 200101
Helena, MT 59620-0101

Dear Ms. Ranf:

Peter Blouke, in his capacity as director of the Montana Department of Commerce, requested my opinion on the following question:

Are sellers and marketers that are statutorily exempted from the bonding and registration requirements of the Montana Telemarketing Registration and Fraud Prevention Act also exempted from the remaining provisions of the Act?

In light of the reorganization which placed the Consumer Protection Division in your department, I am responding to you in his stead.

The Montana Telemarketing Registration and Fraud Prevention Act was enacted by the 1999 legislature and codified at title 30, chapter 14, part 14. The purposes of the Telemarketing Act are "to require telemarketers to register in this state, to establish standards of conduct for telemarketers, and to provide penalties for violation of [the Act]." Mont. Code Ann. § 30-14-1402(1). In enacting the measure, the legislature provided the Department of Commerce with rule-making authority to implement the law. Mont. Code Ann. § 30-14-1402(3).

The Act has several substantive components, which include:

- registration and bonding requirements, contained in Mont. Code Ann. §§ 30-14-1404 and -1405;
- record-keeping requirements, contained in Mont. Code Ann. § 30-14-1408;
- disclosure and contract requirements, contained in Mont. Code Ann. § 30-14-1410;
- prohibited acts and practices, contained in Mont. Code Ann. § 30-14-1411; and
- abusive acts and practices, contained in Mont. Code Ann. § 30-14-1412.

The Department plans to adopt administrative rules clarifying that sellers and telemarketers who are statutorily exempt from the bonding and registration requirements of the Act must comply with the remaining provisions. Both "seller" and "telemarketer" are defined in the Act, but the definitions do not

include any exemptions or other qualifying language. See Mont. Code Ann. §§ 30-14-1403(8), -1403. The Department is concerned that sellers and telemarketers will argue that their exemption from the bonding and registration requirements further constitutes an exemption from the remaining requirements of the Act.

The statutes governing the registration and bonding of sellers and telemarketers provide, in part:

30-14-1404. Registration of sellers or telemarketers. (1)(a) Unless exempt under 30-14-1405, a person may not act as a seller or telemarketer without first having registered with the department.

30-14-1405. Exemptions from registration and bonding. The registration and bonding requirements of 30-14-1404 do not apply to [the following business activities]

The latter provision is the only part of the Telemarketing Act that excludes or otherwise exempts sellers or telemarketers based upon the type of business they conduct.

It is my opinion that the exemptions contained in Mont. Code Ann. § 30-14-1405 apply only to the registration and bonding requirements of Mont. Code Ann. § 30-14-1405, and do not provide any relief from the other requirements of the Act. This conclusion is consistent with elemental standards of statutory construction.

First, the plain meaning of section 30-14-1405 clearly limits the exemptions to registration and bonding. As noted above, section 30-14-1405 provides that the "registration and bonding requirements of 30-14-1404 do not apply." Neither section 30-14-1405 nor any other provision contains language expressly or impliedly exempting these businesses from requirements of the Act other than the bonding and registration requirements. "When the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is no need to resort to extrinsic means of interpretation." In re Marriage of Christian, 295 Mont. 352, 356, 983 P.2d 966, 968 (1999).

Although resort to principles of statutory construction is unnecessary when the meaning of a statute is plain from the words used, those principles operate to confirm my conclusion as to the meaning of the statute. The title of section 30-14-1405 limits the exemption to registration and bonding. Section 30-14-1405 is entitled, "Exemptions from registration and bonding." It would be inconsistent with both the language of the provision and its title to extend the exemptions to other requirements of the act. "While, in construing a statute, the wording of the body, and not that of the title controls, resort may, nevertheless, be had to the title as an aid to construction." State v. Berger, 259 Mont. 364, 367, 856 P.2d 552, 554 (1997) (citations omitted).

Moreover, the fact that section 30-14-1405 expressly provides that the exemption applies to the registration and bonding requirements for certain businesses leads to the conclusion that the remaining requirements are mandatory for all sellers and marketers. Carbon County v. Union Reserve Coal Co., 271 Mont. 459, 466, 898 P.2d 680, 684 (1995). The maxim *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another) is routinely cited in Montana case law. Were the intent to exempt these business activities from all requirements of the Act, the legislature could have done so. Schuff, ex rel. Schuff v. A.T. Klemons & Son, 2000 MT 357, 16 P.3d 1002.

Finally, because the Act seeks to redress wrongs, provide relief and create results that are conducive to the public good, it is a remedial statute. State ex rel. Florence-Carlton School Dist. No. 15-6 v. Board of County Comm'rs, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978). As remedial legislation, the Act must be interpreted expansively rather than narrowly, and liberally construed in favor of protecting consumers. Id. Limiting the exemptions to bonding and registration not only adheres to the plain language of the statute, it also is a proper construction when considering the remedial nature of the Act. Id., quoting 3 Sutherland Statutory Construction § 71.01 n.3 (1974).

THEREFORE, IT IS MY OPINION:

Telemarketers who are exempt from the registration and bonding requirements of the Montana Telemarketing Registration and Fraud Prevention Act are not exempt from other provisions of the Act.

Very truly yours,

MIKE McGRATH
Attorney General

mm/cdt/dm