

DA 19-0238

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 298

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MONTANA INDEPENDENT LIVING PROJECT,

Petitioner and Appellant,

v.

STATE OF MONTANA, DEPARTMENT  
OF TRANSPORTATION,

Respondent and Appellee.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. ADV-2017-921  
Honorable Mike Menahan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Elizabeth L. Griffing, Axilon Law Group, PLLC, Helena, Montana

For Appellee:

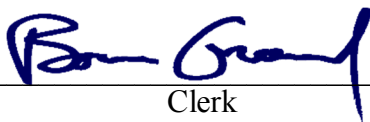
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Submitted on Briefs: October 16, 2019

Decided: December 31, 2019

Filed:

  
Clerk

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Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Montana Independent Living Project (“MILP”) appeals an April 4, 2019 First Judicial District Court order denying MILP’s motion for summary judgment and granting the Montana Department of Transportation’s (“MDOT”) motion for summary judgment. We affirm.

¶2 We restate the issues on appeal as follows:

*Issue One: Whether § 7-14-112(3)(a), MCA, unconstitutionally delegates legislative authority to MDOT by authorizing the disbursement of TransADE funds consistent with the State Management Plan.*

*Issue Two: Whether MDOT engaged in unauthorized rulemaking when adopting guidelines in the State Management Plan.*

*Issue Three: Whether MDOT violated the public’s right to know and participate under Article II, Section 8, of the Montana Constitution when it developed the State Management Plan.*

*Issue Four: Whether the Montana Legislature’s authorization of disbursement of TransADE funds violates Article VIII, Section 12, of the Montana Constitution.*

## **FACTUAL AND PROCEDURAL BACKGROUND**

### History of TransADE

¶3 The facts in this case are not in dispute. In 2001, the Montana Legislature passed S.B. 448, the Transportation Assistance for the Elderly and Disabled (“TransADE”) program. The TransADE program provides operating assistance for bus transportation to state agencies serving elderly and disabled persons around Montana. The act authorized MDOT to administer the TransADE program and award special revenue grants using guidelines established in the State Management Plan for the purposes described in

49 U.S.C. §§ 5310 (formula grants for the enhanced mobility of seniors and individuals with disabilities) and 5311 (formula grants for rural areas).

¶4 In 2006, Congress passed a new federal transportation bill—the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”)—increasing Montana’s federal transit budget from \$1.3 million to approximately \$6.2 million and increasing the number of rural transit systems from nine to thirty-three providers. As a result of these increases, many transit providers required additional local funds. Consequently in 2007, the Montana Legislature passed S.B. 160, allowing TransADE funds to be used as match for federal operating grants pursuant to 49 U.S.C. § 5311.<sup>1</sup>

¶5 Also, in 2006, in response to Montana’s increased federal transportation budget, MDOT staff traveled to communities throughout Montana and held public meetings with community leaders, transit providers, county commissioners, non-profit organizations, and interested citizens.<sup>2</sup> These meetings focused on coordinating and efficiently distributing state and federal funds consistent with state and federal statutory requirements. Feedback received at these meetings shaped the policies and procedures

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<sup>1</sup> In 2015, as a result of increased federal funding, the Montana Legislature sought to meet the need for increased match in state funding and passed S.B. 180 to increase state funding revenue by changing the funding source. Funding is now based on 25% of the revenue collected on base rental charge fees for rental vehicles in Montana.

<sup>2</sup> MDOT no longer has records of notice or meeting minutes due to a ten-year retention schedule. However, MDOT provided an affidavit of Audrey Allums, Grants Bureau Chief for MDOT, asserting that public meetings were attended by a variety of interested community members. Additionally, MDOT provided an affidavit of David Jacobs, Transit Section Supervisor for MDOT, stating that the State Management Plan, adopted following these meetings, was subject to public comment.

set forth in the State Management Plan, allowing MDOT to use federal formulas for disbursing federal transit grants and the Legislature's formula for disbursing state TransADE grants.

#### TransADE Fund Distribution

¶6 TransADE grants are formula grants. Unlike competitive grants, in which primarily private organizations submit applications and are subject to a competitive selection process, formula grants are noncompetitive and generally awarded to state and local governments. Three basic elements comprise MDOT's formula for determining TransADE grant awards: (1) the guidelines established in the State Management Plan, as required by § 7-14-112(3)(a), MCA; (2) the three factors dictating grant award priority, pursuant to § 7-14-112(3)(b), MCA; and (3) the criteria established in § 7-14-112(4), MCA, which MDOT utilizes for determining preference for state grant proposals.

¶7 Section 7-14-112(3)(a), MCA, provides,

Subject to the conditions in subsection (3)(b), the department of transportation is authorized to award [TransADE] grants to counties, incorporated cities and towns, tribal governments, urban transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

Since October 2007, TransADE funds have been administered consistent with the guidelines set forth in the State Management Plan. The Federal Transit Administration ("FTA"), an agency within the United States Department of Transportation providing financial and technical assistance to local public transportation systems, requires that the State Management Plan describe the policies and procedures for administering the transit

program, incorporating the factors and criteria for awarding grants expressed in § 7-14-112(3)(b) and, (4), MCA. The State Management Plan details the State's transportation policies, including the coordination of transportation services in service areas through a Transportation Advisory Committee ("TAC").

¶8 Additionally, the State Management Plan dictates that for an applicant to receive either federal or state funding, it must provide "eligible services," i.e., "general public transportation services" and "consolidated human service transportation." For nonurbanized areas and intercity bus transportation projects, the TAC chooses a "lead agency" for submission of one grant application for each area. This streamlined application process allows the lead agency to administer the grant funding for each community, ensuring efficient coordination of services in an area and avoiding duplication of general public transportation services.<sup>3</sup> MDOT does not prioritize or monitor TransADE services at the local level or determine the entities that receive TransADE funds, but simply provides assistance to the lead agencies.

¶9 As noted, TransADE awards are further decided by the factors and criteria detailed in § 7-14-112(3)(b) and (4), MCA. Section 7-14-112(3)(b)(i)-(iii), MCA, provides three factors for determining priority in awarding TransADE grants:

- (i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, tribal government, urban transportation district, or nonprofit organization;

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<sup>3</sup> Following public statewide meetings in 2006, the Helena TAC designated City of Helena the lead agency for the Helena service area. Similarly, City of Great Falls was designated the lead agency by the Great Falls TAC.

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area; and

(iii) the coordination of services as required in subsection (4).

Additionally, § 7-14-112(4)(a)-(h), MCA, provides that MDOT must give preference to grant

proposals that:

(a) include participation in a local transportation advisory committee;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region by creating a locally developed transportation coordination plan;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (4)(b) through (4)(f).

¶10 Applicants electronically submit applications online through MDOT’s Public Transportation Management System (“PTMS”) website. Applicants must: (1) attach local TAC meeting minutes; (2) address all requirements of § 7-14-112(4), MCA; (3) include local coordination efforts; (4) meet all federal and state requirements; and (5) include TransADE award justification. MDOT’s fiscal planner inputs population and ridership information collected from PTMS, as required by § 7-14-112(3)(b), MCA, into an Excel spreadsheet. Based on these statistics, TransADE grants are determined without MDOT’s discretion to award different amounts than that calculated. As provided for in the State Management Plan, if a lead agency’s application meets the requirements set forth in § 7-14-112, MCA, it is automatically awarded the TransADE grant.

¶11 Because TransADE grants are formula grants, the Legislature has delegated audit authority to the Montana State Auditor. As explained in the affidavit of Audrey Allums, the TransADE program is subject to internal, state, and federal audits on a regular basis to ensure statutory compliance. MDOT has been subject to these audits since TransADE’s implementation in 2001, all of which have complied with state and federal regulations.

#### 2018 TransADE Award

¶12 The Montana Independent Living Project (“MILP”) is a nonprofit organization with a principal place of business in Helena, Montana. MILP is just one of several transportation service providers within the Helena area promoting independence for the elderly and disabled. MILP has been a member of the Helena area TAC for over a decade. In November 2016, consistent with standard practices, MDOT used an Excel

formula spreadsheet based on the criteria required by § 7-14-112(3)(a) and (4), MCA, to determine the 2018 state fiscal year TransADE grant award amount for each lead agency. Grant award figures were provided to all lead agencies prior to the March 2017 application deadline for the 2018 fiscal year to allow coordination with annual local budgets. Prior to the application deadline, MILP submitted a proposal to offer weekend transportation services for elderly and disabled citizens. The Helena City Council provided a proposal to use those same funds for its existing services for elderly and disabled riders. Lead agency City of Helena, as well as 36 other area lead agencies, were awarded TransADE special revenue funds for the 2018 fiscal year in the full amount. City of Helena then distributed the entire amount of those funds to the Helena City Council despite the Helena TAC's recommendation that MILP also receive funding.

¶13 MILP appealed to MDOT regarding its decision to award the general 2018 TransADE grant to City of Helena. MDOT denied the appeal, claiming that lead agencies have broad discretion in distributing funds awarded under the TransADE program so long as elderly and disabled transportation needs are met, but not duplicated, within a geographic area. MILP then appealed to the District Court, which held that: (1) § 7-14-112(3)(a), MCA, does not unconstitutionally delegate legislative authority to MDOT; (2) MDOT did not engage in unauthorized rulemaking in violation of the Montana Administrative Procedure Act ("MAPA"); (3) MDOT met the requirements of Article II, Section 8, of the Montana Constitution when adopting and implementing the State Management Plan; and (4) MDOT maintained strict accountability of TransADE

funds, consistent with Article VIII, Section 12, of the Montana Constitution. MILP appeals.

### STANDARDS OF REVIEW

¶14 Whether a statute is constitutional is a question of law, of which this Court exercises plenary review. *Espinoza v. Mont. Dep't of Revenue*, 2018 MT 306, ¶ 13, 393 Mont. 446, 435 P.3d 603. It is the duty of the courts, if possible, to construe statutes in a manner that avoids an unconstitutional interpretation. *State v. Stanko*, 1998 MT 321, ¶ 15, 292 Mont. 192, 974 P.2d 1132. A statute is presumed constitutional unless it conflicts with the Montana Constitution, in the judgment of the court, beyond a reasonable doubt. *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, 15 P.3d 877. The party challenging the constitutionality of the statute bears the burden of proof, and if any doubt exists, it must be resolved in favor of the statute. *Mont. Cannabis Indus. Ass'n v. State*, 2016 MT 44, ¶ 12, 382 Mont. 256, 368 P.3d 1131.

¶15 We review an entry of summary judgment de novo. *Albert v. City of Billings*, 2012 MT 159, ¶ 15, 365 Mont. 454, 282 P.3d 704. On cross-motions for summary judgment, where the district court is not called to resolve factual disputes and only draw conclusions of law, we review the district court's conclusions of law for correctness. *Bud-Kal v. City of Kalispell*, 2009 MT 93, ¶ 15, 350 Mont. 25, 204 P.3d 738.

## DISCUSSION

¶16 *Issue One: Whether § 7-14-112(3)(a), MCA, unconstitutionally delegates legislative authority to MDOT by authorizing the disbursement of TransADE funds consistent with the State Management Plan.*

¶17 On appeal, MILP argues that § 7-14-112(3)(a), MCA, unconstitutionally delegates legislative authority to MDOT, in contravention of Article III, Section 1, of the Montana Constitution, because MDOT may use its own discretion under its own guidelines, established in the State Management Plan, in seeking federal transportation funds. MDOT counters that § 7-14-112, MCA, is constitutional because the Legislature provided clear standards and guidelines for administering TransADE funds, which MDOT adheres by way of the State Management Plan and its PTMS figures. The District Court held that because the Legislature directed MDOT to distribute grants pursuant to the State Management Plan, constrained by the factors and criteria provided in § 7-14-112(3)(b) and (4), MCA, the statute is constitutional.

¶18 Article III, Section 1, of the Montana Constitution details the separation of powers, providing that “No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.” This Court has held that “The Montana Constitution is not a grant but a limitation on legislative power, so that the Legislature may enact any law not expressly or inferentially prohibited by the Constitution.” *Plath v. Hi-Ball Contractors*, 139 Mont. 263, 267, 362 P.2d 1021, 1023 (1961) (citations omitted).

¶19 The Legislature’s law-making power may not be granted to an administrative body to be exercised under the guise of administrative discretion. *Petition to Transfer Territory*, 2000 MT 342, ¶ 15, 303 Mont. 204, 15 P.3d 447 (citing *Baucus v. Lake County*, 138 Mont. 69, 78, 354 P.2d 1056, 1061 (1960)). Accordingly, when delegating powers to an administrative body, the Legislature must prescribe a policy, standard, or rule for their guidance and must not vest them with an arbitrary and uncontrolled discretion. *Baucus*, 138 Mont. at 78, 354 P.2d at 1061; *State v. Mathis*, 2003 MT 112, ¶ 15, 315 Mont. 378, 68 P.3d 756. If the Legislature does not prescribe with reasonable clarity the limits of this power, or if the limits are overly broad, its attempt to delegate is void. *Baucus*, 138 Mont. at 78, 354 P.2d at 1061. Conversely, a statute completely and validly delegates administrative authority when nothing with respect to a determination of what is the law is left to the administrative agency, and its provisions are sufficiently clear, definite, and certain to enable the agency to know its rights and obligations. *Mathis*, ¶ 15.

¶20 We expressed a three-part framework for analyzing whether a statute’s provisions are sufficiently clear and definite in *Duck Inn, Inc. v. Mont. St. Univ.*, 285 Mont. 519, 949 P.2d 1179 (1997). At issue in *Duck Inn* was whether a statute permitting Montana State University-Northern to lease its facilities to private parties constituted a valid delegation of legislative authority to an administrative agency. *Duck Inn*, 285 Mont. at 525, 949 P.2d at 1182. We determined that the statute at issue was constitutional because: (1) the policy behind the statute was present—to increase revenues available for the capital costs of, and debt service on, campus facilities; (2) the implicit, but clear rationale behind the

statute was evident—to minimize the tax support necessary to fund units of the Montana university system by leasing campus facilities; and (3) the statute constrained the leasing of facilities for the academic purposes for which they were established, providing a “standard” or “guide” required for proper delegation of legislative power. *Duck Inn*, 285 Mont. at 525-26, 949 P.2d at 1183.

¶21 Statutes are presumed to be constitutional. *Oberson v. U.S.D.A.*, 2007 MT 293, ¶ 14, 339 Mont. 519, 171 P.3d 715. Such a presumption can only be overcome after careful consideration of the purpose and effect of the statute, employing the proper level of scrutiny. *Donaldson v. State*, 2012 MT 288, ¶ 10, 367 Mont. 228, 292 P.3d 364 (citations omitted). Thus, employing longstanding rules of statutory interpretation, we read and construe a statute as a whole to give effect to its purpose and avoid an absurd result. *S.L.H. v. State Comp. Mut. Ins. Fund*, 2000 MT 362, ¶ 17, 303 Mont. 364, 15 P.3d 948. Accordingly, in determining whether § 7-14-112(3)(a), MCA, constitutes an unconstitutional delegation of legislative authority, we read this subsection in conjunction with the statute’s accompanying provisions.

¶22 Applying the framework articulated by *Duck Inn* to § 7-14-112, MCA, we find the statute sufficiently clear for MDOT to understand its obligations such that the statute does not constitute an unconstitutional delegation of legislative authority. Principally, the statute’s policy is clear, requiring that the disability transportation services account in the state special revenue fund is used to provide transportation services for elderly and disabled persons. Section 7-14-112(2), MCA. Additionally, the implicit yet clear rationale is evident—efficiently administering transportation grant awards to service

providers through coordinated efforts to avoid duplication of transportation services in geographic areas. Finally, reading subsection (3)(a) in conjunction with the statute's other provisions, the statute provides a "standard" or "guide" for MDOT to sufficiently understand its obligations. The statute explicitly authorizes MDOT to award transportation grants "using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311" and "[s]ubject to the conditions of subsection (3)(b)." Section 7-14-112(3)(a), MCA. Subsection (3)(b) outlines three factors that MDOT must consider when determining grant awards. Further, subsection (4) requires that MDOT consider a list of criteria when giving "preference" to grant proposals. It is evident by the plain language of the statute that MDOT may not freely use its "own discretion under its own guidelines" in awarding TransADE grants, but rather, is constrained by a "standard" or "guide" in awarding such grants. *See Duck Inn*, 285 Mont. at 525-26, 949 P.2d at 1183. Because the policy, rationale, and criteria for awarding TransADE grants is present, the statute constitutes a clear delegation of legislative authority to MDOT.

¶23 MILP further argues that federal law defines the scope of MDOT's authority, which itself constitutes an unconstitutional delegation of legislative authority. In support of this argument, MILP relies on *Lee v. State*, 195 Mont. 1, 635 P.2d 1282 (1981), in which the appellant sought a declaratory judgment that the statute at issue, § 61-8-304, MCA, was unconstitutional. *Lee*, 195 Mont. at 3, 635 P.2d at 1286. The statute in *Lee* required the attorney general to proclaim a speed limit "not . . . less than that required by federal law whenever the establishment of such a speed limit by the state is required by

federal law’ to receive federal highway funds.” *Lee*, 195 Mont. at 9, 635 P.2d at 1286. The statute correspondingly required the attorney general to terminate such proclaimed speed limits “whenever such a speed is no longer required by federal law.” *Lee*, 195 Mont. at 9, 635 P.2d at 1286. This Court held that because the statute used mandatory language prospectively requiring the adoption of state speed limits consistent with federal law in order to receive federal funding, the statute was an unconstitutional delegation of legislative authority. *Lee*, 195 Mont. at 9-10, 635 P.2d at 1286.

¶24 Here, the statute’s reference to federal law is found in § 7-14-112(2) and (3)(a), MCA. Section 7-14-112(2), MCA, explains, “The [transportation services] account must be used to provide operating funds or *matching funds* for operating grants pursuant to 49 U.S.C. 5311 [formula grants for rural areas] . . . .” (Emphasis added.) Section 7-14-112(3)(a), MCA, “authorizes” MDOT to award grants for the purposes described in 49 U.S.C. §§ 5310 (formula grants for the enhanced mobility of seniors and individuals with disabilities) and 5311.

¶25 Contrary to MILP’s argument, federal law does not define the scope of MDOT’s authority, requiring MDOT to apply a federal formula for determining state transportation funds. Instead, the statute dictates that MDOT, restricted by the criteria and factors detailed in § 7-14-112(3)(b) and (4), MCA, establish its *own* guidelines through the State Management Plan for administering TransADE funds. Moreover, unlike the statute at issue in *Lee*, there is no mandatory language in § 7-14-112, MCA, requiring MDOT to prospectively change state law consistent with federal law in order to obtain federal funding. Instead, federal law merely supports the implicit rationale underlying the

statute—to distribute *state* transportation funds as formula grants for transportation services for elderly and disabled persons as a match with federal funds, thus avoiding duplication of funding efforts in the same geographic location.

¶26 Finally, MILP asserts that the statute does not specifically define the policies and procedures a state must use in development of the State Management Plan, yielding MDOT unfettered discretion in creating these policies and procedures. MILP particularly takes issue with the State Management Plan’s directive that TransADE funds be granted to lead agencies, who have full discretion to use these funds as they see fit within their service areas.

¶27 MILP fails to grasp the distinction between “formula” versus “competitive” grants. As formula grants, there is no requirement that TransADE applications are weighed against one another, with grant awarded to the most qualified applicants. Rather, the language in the statute merely “authorizes” MDOT to award TransADE grants to “counties, incorporated cities and towns, tribal governments, urban transportation districts, or nonprofit organizations” using the state management plan, subject to the factors and criteria set forth in § 7-14-112(3)(b) and (4), MCA. MDOT’s award of TransADE grants to the lead agency City of Helena fully comports with the discretion accorded to it by the statute. It is immaterial to our inquiry as to the constitutionality of the statute that the lead agency, most familiar with the nuances of each transportation project within its service area, may award grants to qualified applicants. *See Mathis*, ¶ 20. The Legislature may delegate ministerial functions by way of a statute, so long as its requirements are sufficiently clear. *Mathis*, ¶ 11. The criteria

set forth in § 7-14-112, MCA, for awarding TransADE funds adequately meet this requirement.

¶28 The constitutionality of a legislative enactment is prima facie presumed, and every intendment in its favor will be made unless its unconstitutionality appears beyond a reasonable doubt. *Ingraham v. Champion Int'l.*, 243 Mont. 42, 47, 793 P.2d 769, 772 (1990). MILP has failed to prove the statute is unconstitutional beyond a reasonable doubt. Section 7-14-112, MCA, sets forth with reasonable clarity the limitations on MDOT's discretion in administering TransADE formula grants. The District Court did not err in determining that § 7-14-112(3)(a), MCA, constitutionally delegates legislative authority to MDOT.

¶29 *Issue Two: Whether MDOT engaged in unauthorized rulemaking when adopting guidelines in the State Management Plan.*

¶30 In granting summary judgment for MDOT, the District Court held that MDOT did not engage in unauthorized rulemaking under the MAPA because the Legislature specifically directed MDOT to follow the procedures set forth in the State Management Plan. MILP argues that the District Court erred because the State Management Plan does not supersede MAPA requirements; the State Management Plan contains many declarations of general policies and procedures related to the TransADE program meeting the definition of "rule" pursuant to MAPA; and the State Management Plan's policies and procedures are void as unauthorized rulemaking. Specifically, MILP argues that the State Management Plan's designation of lead agencies as the only eligible applicants for TransADE funds and the coordination and consolidation of local transportation services

under a single service provider constitute statements of general applicability, and as such, is bound by MAPA rulemaking requirements.

¶31 Administrative agencies enjoy only those powers specifically conferred upon them by the Legislature. *Bell v. Dep't of Licensing*, 182 Mont. 21, 22, 594 P.2d 331, 332 (1979). Administrative rules must be strictly confined within the applicable legislative guidelines. *Bick v. State Dep't of Justice*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986). It is axiomatic in Montana law that administrative regulation cannot change a statute. *Michels v. Dep't of Soc. & Rehabilitation Servs.*, 187 Mont. 173, 178, 609 P.2d 271, 273 (1980). Rules adopted by administrative agencies which conflict with statutory requirements or exceed authority provided by statute are invalid. *See Clark Fork Coalition v. Tubbs*, 2016 MT 229, ¶ 25, 384 Mont. 503, 380 P.3d 771 (citations omitted).

¶32 A “rule” as defined by MAPA includes “each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency.” Section 2-4-102(11)(a), MCA. Rulemaking is a quasi-legislative power intended to add substance to the acts of the Legislature to complete absent but necessary details and resolve unexpected problems. *McGree Corp. v. Mont. P.S.C.*, 2019 MT 75, ¶ 34, 395 Mont. 229, 438 P.3d 326.

¶33 MILP relies on *Southern Montana Telephone Co. v. Montana Public Service Regulation*, 2017 MT 123, 387 Mont. 415, 395 P.3d 473, to support its argument that the formulaic applications detailed in the State Management Plan must be adopted consistent with MAPA rulemaking procedures to be valid. In *Southern Montana Telephone Co.*, the

Montana Public Service Commission developed and employed a three-part “rubric” by which to judge companies’ motions for protective orders. *S. Mont. Tel. Co.*, ¶ 8. We held that adoption of the rubric constitutes a rule, consistent with MAPA, § 2-4-102(11), MCA, explaining that the rubric did not call for balancing individual interests on a case-by-case basis, but established formulaic criteria that required no further analysis. *S. Mont. Tel. Co.*, ¶ 17.

¶34 In *McGree Corp.*, we distinguished the rubric at issue in *Southern Montana Telephone Co.* from discretionary language in a statute, addressing whether the Public Service Commission was required to engage in rulemaking under MAPA to exercise its statutorily-granted discretion under § 69-12-323(2)(b), MCA. *McGree Corp.*, ¶ 31. The statute at issue required the Commission to issue Class D motor carrier operating permits to motor vehicles transporting garbage by considering a list of three factors laid out in the statute. *McGree Corp.*, ¶ 14. In addition, the plain language of the statute authorized, but did not require, that the Commission consider competition when determining public convenience and necessity. *McGree Corp.*, ¶ 35. We explained that, unlike the rubric in *Southern Montana Telephone Co.*, the statute itself granted the Commission discretion to consider competition when determining public convenience and necessity. *McGree Corp.*, ¶ 37. Thus, exercising its discretion under the facts presented to it was not rulemaking under MAPA because the Commission was not announcing and applying a formula that would displace its consideration of case-specific factors to resolve a particular dispute. *McGree Corp.*, ¶ 37.

¶35 We find the statute at issue here sufficiently comparable to that in *McGree Corp.*, and distinguishable from the rubric in *Southern Montana Telephone Co.* The Legislature, as evidenced by the plain language of § 7-14-112(3)(a), MCA, explicitly “authorized” MDOT to award transportation grants to “counties, incorporated cities and towns, tribal governments, urban transportation districts, and nonprofit organizations . . . using guidelines established in the state management plan . . . .” While MDOT awards TransADE grants exclusively to lead agencies, applications must still adhere to the core legislative criteria in § 7-14-112(3)(b) and (4), MCA. Because the State Management Plan abides by these core requirements, MDOT neither exceeds nor contradicts the authority specifically granted to it by the statute. *See Clark Fork Coalition*, ¶ 25. MDOT is not required to go through MAPA rulemaking procedures to exercise this statutorily granted discretion. *See McGree Corp.*, ¶ 35. The District Court did not err in concluding that MDOT was not required to comport with MAPA rulemaking requirements when creating the State Management Plan.

¶36 *Issue Three: Whether MDOT violated the public’s right to know and participate under Article II, Section 8, of the Montana Constitution when it developed the State Management Plan.*

¶37 MILP further argues that there is no record to conclude MDOT complied with Article II, Section 8, of the Montana Constitution when the State Management Plan was developed. MDOT argues that the District Court correctly found it met the requirements of the Montana Constitution when adopting and implementing the State Management Plan because the uncontroverted and only testimony in the record established that MDOT

held numerous statewide public meetings and incorporated input from those meetings in the State Management Plan.

¶38 Article II, Section 8, of the Montana Constitution 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 decisions as may be provided by law.” The essential elements of public participation as required by this section are notice and an opportunity to be heard. *Citizens for a Better Flathead v. Bd. of County Comm’rs*, 2016 MT 256, ¶ 39, 385 Mont. 156, 381 P.3d 555.

¶39 The Legislature implemented these constitutional rights by enacting §§ 2-3-101 through -221, MCA. *Citizens for a Better Flathead*, ¶ 40. Agencies must develop procedures for permitting and encouraging public participation and provide adequate notice of planned actions. Section 2-3-103(1)(a), MCA. There is not a specific method of notification required, only that notice is “adequate.” *Jones v. Cnty. of Missoula*, 2006 MT 2, ¶ 31, 330 Mont. 205, 127 P.3d 406; § 2-3-103(1)(a), MCA. Additionally, agencies must give the public a reasonable opportunity to submit data, views, or arguments. Section 2-3-111, MCA. All meetings of public or governmental bodies must be open to the public. Section 2-3-203(1), MCA. Additionally, governmental bodies must either keep minutes of their meetings or create audio recordings accompanied by logs or time stamps. Section 2-3-212(1), (3), MCA.

¶40 It is undisputed that in 2006, MDOT conducted meetings around the state with transit agencies, the Montana Transit Association, local governments and interested citizens to discuss SAFETEA-LU and the State Management Plan. Although MDOT’s

records of notices and meeting attendance is no longer available due to its ten-year retention policy, the absence these records are not fatal to MDOT's argument. This Court may consider whether the facts, taken together, are sufficient to prove the government body has given adequate notice of a meeting. *Jones*, ¶ 34. MDOT submitted two affidavits to the District Court, one from Audrey Allums, Grants Bureau Chief for MDOT, and one from David Jacobs, Transit Section Supervisor for MDOT, to support its assertion that public meetings occurred and were attended by a variety of community members, and the resulting State Management Plan was developed following public comment. Together, these facts are sufficient to prove the public had adequate notice and an opportunity to be heard. *See Bitterroot River Protective Ass'n v. Bitterroot Conservation Dist.*, 2008 MT 377, ¶ 21, 346 Mont. 507, 198 P.3d 219. MILP did not submit any information to rebut this evidence. Accordingly, the District Court did not err in determining MDOT did not violate Article II, Section 8, of the Montana Constitution when enacting the State Management Plan.

¶41 *Issue Four: Whether the Montana Legislature's authorization of disbursement of TransADE funds violates Article VIII, Section 12, of the Montana Constitution.*

¶42 Lastly, MILP argues that the statute's delegation of legislative authority to MDOT, and MDOT's delegation to lead agencies to oversee the disbursement of TransADE funds fails to insure strict accountability of public funds in violation of Article VIII, Section 12, of the Montana Constitution. The District Court held, and MDOT asserts on appeal, that MILP fails to demonstrate how MDOT could violate a

constitutional provision which directs the Legislature to maintain accountability over public funds.

¶43 Article VIII, Section 12, of the Montana Constitution states, “The Legislature shall by law insure strict accountability of all revenue received and money spent by the state, towns, and all other local government entities.” A constitutional provision addressed to the Legislature is non-self-executing. *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 16, 326 Mont. 304, 109 P.3d 257. The Legislature responded to the non-self-executing mandate of the Montana Constitution by assigning audit power to the State Legislative Auditor, requiring the Auditor to conduct financial and compliance audits of each state agency every two years. *Reep v. Bd. of Cnty. Comm’rs*, 191 Mont. 162, 169-70, 622 P.2d 685, 689 (1981); § 5-13-304(1), MCA.

¶44 MILP’s argument stems from its assertion that the Legislature unconstitutionally granted MDOT unfettered discretion to administer the TransADE program and disburse funds pursuant to the State Management Plan, thus compromising its responsibility to strictly account for these funds. As we have explained, this argument is premised on faulty logic. The Legislature has provided the criteria by which the formula grants are awarded; in crafting the State Management Plan, MDOT must adhere to these statutory requirements. Further, the Legislature oversees MDOT’s award of the state special revenue account funds according to these criteria, completed through regular financial and compliance audits.

¶45 In granting summary judgment in favor of MILP, the District Court asserted that “MILP fails to explain how [MDOT] could violate a constitutional provision which

directs the *legislature* to maintain accountability over public funds.” (Emphasis in original.) It appears the District Court misconstrued MILP’s argument, which concerns the unconstitutionality of the statute. Nonetheless, this Court will affirm a district court when it reaches the right result, even if it reaches that result for the wrong reason. *Hudson v. Irwin*, 2018 MT 8, ¶ 12, 390 Mont. 138, 408 P.3d 1283. The District Court did not err in finding that the disbursement of TransADE funds complies with Article VIII, Section 12, of the Montana Constitution.

### CONCLUSION

¶46 The statute at issue, § 7-14-112, MCA, completely and validly delegates administrative authority to MDOT because its provisions are sufficiently clear, definite, and certain such that MDOT understands its obligations in awarding TransADE funds. Additionally, the State Management Plan’s policies and procedures are within the discretion granted to MDOT by the Legislature, and thus, are not subject to MAPA rulemaking procedures. In adopting the State Management Plan, MDOT met its constitutional requirements by providing the public with notice and an opportunity to be heard. Further, MDOT’s distribution of TransADE funds to lead agencies complies with Article VIII, Section 12, of the Montana Constitution, mandating strict accountability of public funds. The District Court did not err as a matter of law in granting summary judgment in favor of MDOT.

¶47 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON

/S/ JAMES JEREMIAH SHEA

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR