VOLUME NO. 38 OPINION NO. 20

EMPLOYEES, PUBLIC - Non-teaching school district employees;
LABOR UNIONS - Modification of statutory benefit levels by collective bargaining prohibited;
STATE AGENCIES - School districts and post-secondary vocational technical center;
SCHOOL DISTRICTS - School districts and post-secondary vocational technical center;
SICK LEAVE - Non-teaching exmployees of school districts and vo-tech centers entitled to benefits as public employees;
VACATIONS - Non-teaching employees of school districts and vo-tech centers entitled to benefits as public employees;

EDUCATION - Post-secondary vocational technical centers as state agencies;
MONTANA CODE ANNOTATED - Sections 2-18-307, 2-18-611, 2-18-618, 7-4-2505, 20-1-101(8), 39-31-305(2).

HELD: 1. Non-teaching employees of school districts and post-secondary vocational technical centers are entitled to vacation and sick leave benefits under Title 2, chapter 18, part 6, MCA.

2. Title 2, chapter 18, part 6, MCA, establishes maximum and minimum benefits which may not be varied through collective bargaining or other negotiation.

23 May 1979

Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion on the following questions:

1. Do the provisions of Title 2, chapter 18, part 6, MCA pertaining to sick leave and vacation benefits for public employees, apply to non-teaching employees working in vocational- technical centers and public schools?

2. If so, is the extent of benefits a proper subject of negotiation between the employees and the school district?

Your first question was partially answered by the Montana Supreme Court in Teamsters Local No. 45 v. School District No. 1, 162 Mont. 277, 511 P.2d 339 (1973). In Teamsters, the Court held that a school district was a political subdivision of the State of Montana, and "that school district employees other than teachers are entitled to vacation benefits under section 59-1001, R.C.M. 1947" (now codified as section 2-18-611, MCA). Attorney General Woodahl further held that Teamsters also applied to assure sick leave benefits to non-teaching employees under section 2-18-618, MCA (section 59-1008, R.C.M. 1947). 35 Op. Att'y Gen. No. 69 (1974). It is therefore clear that non-teaching

employees of a school district are entitled to sick leave and vacation benefits. If employees who work at a vocational technical center are considered to be school district employees, they too are entitled to benefits.

No principled basis appears to distinguish a vocational-technical center from any other school for purposes of determining the status of the employees who work there. Such a center is denominated a "school" by definition. § 20-1-101(8), MCA (§ 75-7701, R.C.M. 1947). Further, the governing body of a vocational-technical center--be it a high school board, a community college district, or some other entity--operates as an agent of the state for that purpose, just as a county school board does for the purpose of operating a common school. See Teamsters, 162 Mont. at 289; Pierson v. Hendricksen, 98 Mont. 244, 253, 38 P.2d 991 (1934). If ordinary non-teaching employees of a school district are considered to be state employees under an agency theory, as Teamsters suggests, the same rationale requires extension of identical benefits to the non-teaching employees at a post-secondary vocational-technical center.

You also inquire whether the employing agency and the non-teaching employees may negotiate for vacation and sick leave benefits different than those provided by statute. My conclusion is that they cannot. Benefit levels set by statute have consistently been considered mandatory rather than minimum. For example, in City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971), the Montana Supreme Court held that section 26-604, R.C.M. 1947, now codified at section 7-4-2505, MCA, establishes both a maximum and a minimum salary level which could not be altered by payment of "time and a half" for overtime. See also 37 Op. Att'y Gen. No. 113 (1978). In my opinion, a similar rationale applies to vacation and sick leave benefits. The statutes in question are couched in mandatory terms, and they represent a legislative declaration of public policy regarding the extent of these benefits for employees of the State and its agencies. School District No. 12 v. Hughes, 170 Mont. 267, 274, 552 P.2d 328 (1976). While public employees have the right to bargain collectively as to fringe benefits, section 39-31- 305(2), MCA, that right does not confer upon the employer school boards the authorization to ignore the mandatory maximum/minimum vacation and sick leave benefits set by the legislature. Compare § 2-18-307 (pay plan procedures for increasing salary may be altered by collective bargaining in some cases.)

THEREFORE, IT IS MY OPINION:

1. Non-teaching employees of school districts and post-secondary vocational technical centers are entitled to vacation and sick leave benefits under Title 2, chapter 18, part 6, MCA.

2. Title 2, chapter 18, part 6, MCA, establishes maximum and minimum benefits which may not be varied through collective bargaining or other negotiation.

Very truly yours,

MIKE GREELY
Attorney General