

**Opinion No. 9.**

**Schools and School Districts—Membership in State Teachers' Association Is Not Compulsory—Withholding of a Teacher's Pay on Days of Teachers' Association Meeting.**

**HELD:** That a board of trustees of a school district which elects to close its school during the annual session of the state teachers' association does not

have authority to withhold the pay of its teachers during the days school is closed for such meeting, regardless of the teachers' membership in the association or attendance at its annual session.

March 11, 1953.

Mr. Edward C. Schroeter  
County Attorney  
Flathead County  
Kalispell, Montana

Dear Mr. Schroeter:

You have requested my opinion concerning the authority of the board of trustees of a school district to withhold the pay of a teacher who is not a member of a state teachers' association on the days school is closed for the convention of the association.

There are two statutory provisions which pertain to the closing of schools for conventions of teachers. Subsection 22 of Section 75-1632, R. C. M., 1947, as amended by Chapter 207, Laws of 1951, authorizes school trustees.

"To close school at their discretion during the annual session of the state teachers' association, and to allow teachers to attend the same without loss of salary."

Similar authority is given to the trustees of districts maintaining high schools and trustees of county high schools in Subsection 12 of Section 75-4231, R. C. M., 1947, as amended by Chapter 106, Laws of 1951, which grants the power,

"To close the high school at its discretion during the annual session of the state teachers' association and to allow the principal or district superintendent and teachers to attend such annual session without loss of salary."

It is to be observed that the above quoted statutes permit the closing of schools for the meetings of the teachers' association without loss of salary. There is no requirement that the teachers attend the meeting to avoid a deduction in salary, but the trustees are merely given the discretionary power to close the school during the session.

The teachers in entering into contracts for their services with the trustees agree to teach school for those days school is open. It is the act of the trustees which closes the schools and prevents the teachers from teaching on the days the schools are closed. The discretionary power granted to the trustees by the statutes is limited to the closing of schools for the convention. The statutes expressly preclude the loss of salary if the schools are closed and there is no discretion given to the trustees to withhold salary payment.

It is not made a duty of the teachers to attend the convention, but the terms of the statute make it possible for the attendance at the convention without salary loss. The intent of the statute is to remove obstacles to attendance, but there is no suggestion of compulsion that would result from a loss of salary.

An analagous provision is found in Section 75-2202, R. C. M., 1947, which states that "no teacher shall be required to teach school on a legal holiday . . . and no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be a legal holiday."

It is therefore my opinion that a board of trustees of a school district which elects to close its school during the annual session of the state teachers' association does not have authority to withhold the pay of its teachers during the days school is closed for such meeting, regardless of the teachers' membership in the association or attendance at its annual session.