

Opinion No. 68

**Schools and School Districts—Compulsory Attendance Until Sixteen
Years of Age**

Held: That any child between the ages of eight and sixteen years must attend school and the fact that a child has completed the work of the eighth grade will not excuse such child from further attendance.

July 29, 1958

Miss Harriet Miller
State Superintendent of Public Instruction
Helena, Montana

Dear Miss Miller:

You have requested my opinion concerning the compulsory school attendance of children who are not over the age of sixteen years. You have asked in particular if a child who has finished the eighth grade

and is not sixteen years of age may be excused from further attendance.

In answering your questions it is necessary to consider the provisions of Sections 75-2901 and 2902, RCM, 1947, as amended by Chapter 53, Laws of 1955. Section 75-2901, RCM, 1947, as amended, provides in part:

"Every parent, guardian, or other person, having charge of any child between the ages of eight (8) and sixteen (16) years, shall send such child to a public, private or parochial school in which the basic language taught is English, for the time that the school is attended, is in session, provided, however, that children sixteen (16) years of age or over who have successfully completed the school work of the eighth grade, or whose wages are necessary to the support of the family of such child, may be employed during the time that the public schools are in session upon making the proof and securing the age and school certificate provided for in the following section."

The amendment to the above quoted statute by Chapter 53, Laws of 1955, changed the age from fourteen years to sixteen years in the proviso clause. Effect must be given to this amendment and from the language used it is clear that it was the intent of the legislature to require school attendance for children until they are sixteen years of age. In Opinion No. 173, Volume 20, Report and Official Opinions of the Attorney General, this office considered Section 75-2901, RCM, 1947, prior to its amendment and held:

"No child, under the age of sixteen years, may be employed during those hours of the school term when schools are actually in session, except that a child over the age of fourteen years may be employed during the hours of the school term when schools are actually in session, provided such child obtains an age and schooling certificate as provided in Section 1136, Revised Codes of Montana, 1935, showing such child has successfully completed the eighth grade, or that the wages of such child are necessary for the support of the family, . . ."

I agree with the conclusion reached in the above quoted opinion of this office although since said opinion was rendered the age requirement was changed from fourteen years to sixteen years. It is apparent from reading the foregoing legislative act that there is confusion and ambiguity resulting from the mandatory requirement in the first part of the statute that children between the ages of eight and sixteen must attend school and in the proviso clause that children who are sixteen years or older may be employed. The change of the age from fourteen to sixteen years in the proviso clause in effect negatives any possible exception to the first part of the quoted portion of Section 75-2901, RCM, 1947, but the fact that the statute was amended indicates the legislative intent to raise the educational standards by compelling a longer period of attendance in school.

Section 75-2902, RCM, 1947, which prescribes the rules when children under the age of sixteen years may be employed, was also amended by Chapter 53, Laws of 1955. This statute provides in part:

"No child under sixteen (16) years of age shall be employed . . . unless such child shall present . . . an age and schooling certificate. Such certificate shall be issued . . . upon said proof that such child is of the age of sixteen, (16) years or over, and has successfully completed the eighth grade . . . provided, also that in case the wages of any child over sixteen (16) years of age are necessary to the support of the family of such child, the city superintendent of schools . . . may . . . issue a certificate permitting the employment of such child, even though the said child may not have completed said eighth grade work."

The foregoing illustrates the inconsistent provisions found within one paragraph of this statute. I confess that the poor draftsmanship of the statutes makes it difficult to arrive at the legislative meaning. A rule of construction which is helpful here is found in the case of *State vs. Hays*, 86 Mont. 58, 282 Pac. 32, which reads as follows:

"It will be presumed that the legislature, in adopting the amendment, intended to make some change in the existing law, and therefore the courts will endeavor to give some effect to the amendment."

By raising the age from fourteen to sixteen years in Section 75-2901, RCM, 1947, as amended, with a like change in Section 75-2902, RCM, 1947, it must be concluded that the members of the legislature intended that children attend school until they are sixteen years of age notwithstanding the fact such children might have completed the eighth grade.

It is therefore my opinion that any child between the ages of eight and sixteen years must attend school and the fact that a child has completed the work of the eighth grade will not excuse such child from further attendance.

Very truly yours,
FORREST H. ANDERSON
Attorney General