

VOLUME 31

Opinion No. 16

SCHOOLS AND SCHOOL DISTRICTS; Teachers, Leave of absence, for military training purposes; NATIONAL GUARD; Two weeks annual military training; school teachers—SECTION 77-157, REVISED CODES OF MONTANA, 1947.

HELD: Section 77-157, R.C.M. 1947, does not grant military leave of absence to school teachers, but such leave may be granted by the school district board of trustees.

March 16, 1966

Mr. Tom Darland
Sheridan County Attorney
Plentywood, Montana

Dear Mr. Darland:

You inquire as to whether teachers and other employees of a school district are entitled to the benefits of section 77-157, R.C.M. 1947. This section reads:

That any person who is a member of the organized national guard of the state of Montana or who is a member of the organized or unorganized reserve corps or forces of the United States army, navy, marine corps, or coast guard, which now exist or may be created at any time in the future by proper authority, and who is an appointee of or employee of the state of Montana, or any of its departments, or any county or city within the state, shall be given leave of absence with pay for attending regular encampments, training cruises, and similar training programs authorized by the secretary of war of the United States for the Montana national guard or by the proper legal authority in charge of the reserve corps or forces of the United States army, navy, marine corps, or coast guard while in attendance at such annual encampment, training cruise, and similar training program, or without the time being charged against him on his annual vacation.

The question becomes whether teachers and other employees of a school district are appointees or employees of the state of Montana, or any of its departments, or of any county or city within the state.

This office has held that full-time employees of school districts are entitled to vacation leave under the provisions of sections 59-1001 through 59-1007, R.C.M. 1947. Opinion No. 127, Volume 23, Official Opinions of Attorney General. That opinion was based upon the specific exclusion of school teachers from the operation of that act. The statute here in question makes no mention of school teachers or of

school districts. Therefore, the reasoning of the above cited opinion does not appear to have any application to the question here under consideration.

For certain purposes school districts are political subdivisions of the state, e.g., **Young v. Board of Trustees** (1931) 90 Mont. 576, 582, 4 P. 2d 725. However, the mere fact that school districts are political subdivisions of the state for some purposes does not make them a "department" of the state. Nor are school teachers state employees. School teachers perform professional services for the school under a contract with the school district **Eastman v. School District No. 1** (1947) 120 Mont. 63, 68, 180 P. 2d 472. The Legislature certainly has the authority to establish the terms of school contracts on this subject. **Abshire v. School District No. 1** (1950) 124 Mont. 244, 247, 220 P. 2d 1058. However, until it has done so this office cannot say that school teachers are employees of the state of Montana. The board of trustees may grant leaves of absence for military purposes if so desired. Opinion No. 73, Volume 25 and Opinion No. 85, Volume 27, Official Opinions of Attorney General.

Therefore, it is my opinion that section 77-157, R.C.M. 1947, does not grant military leave of absence to school teachers, but that such leave may be granted by the school district board of trustees.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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