

JOINT MERIT SYSTEM - SUPERINTENDENT OF PUBLIC INSTRUCTION - Surplus Property Division. Section 82-3102, Revised Codes of Montana, 1947.

HELD: The Surplus Property Division of the Superintendent of Public Instruction's office may be included in the Montana Joint Merit System.

September 18, 1970

Mr. Melvin P. Martinson
State Merit System
Helena, Montana 59601

Dear Mr. Martinson:

You have requested my opinion concerning the legality of the inclusion of the Surplus Property Division of the Superintendent of Public Instruction's office in the Montana Joint Merit System.

The state agency for surplus property was created in 1953 by chapter 31, Title 82, Revised Codes of Montana, 1947. The agency is to be administered by the state board of education and subject to the supervision of the state superintendent of public instruction.

The act does not expressly require inclusion of the state agency for surplus property in the Montana Joint Merit System. However, section 82-3102(f), R.C.M. 1947, does provide:

“(f) The state agency for surplus property, in the administration of this act, shall co-operate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act, and make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for, property donable or donated to the state.” (Emphasis supplied)

The federal government has amended the minimum standards of operation of surplus property programs so that such agencies must

comply with a merit system of personnel administration - 45 C.F.R., Part 7. In order to comply with federal requirements for a merit system of personnel administration Montana has established a joint merit system.

Several state agencies have previously been included in the Montana Joint Merit System. In 22 **Opinions of the Attorney General**, opinion no. 96, page 161, it was held that the mental hygiene department may be included in the Montana Joint Merit System. In Attorney General Letter Opinions dated September 28, 1960, and February 8, 1966, the inclusion of the committee on problems of the aging and civil defense organizations in the Montana Joint Merit System was approved by this office.

In order to receive surplus federal property the agency must comply with federal requirements. One of the federal regulations requires a merit system of personnel administration. It is clearly the intent of the legislature as evidenced by the wording of section 82-3102, R.C.M. 1947, that the state agency for surplus property cooperate with the federal agencies. A joint merit system has been established in Montana to administer a merit system of personnel administration.

THEREFORE IT IS MY OPINION that the Surplus Property Division of the Superintendent of Public Instruction's office is authorized to be included under the Montana Joint Merit System.

Very truly yours,

ROBERT L. WOODAHL
Attorney General