

**UNIVERSITY OF MONTANA - Admission; Resident has preference; UNIVERSITY OF MONTANA - Nonresident student cannot exclude resident. Section 75-8601, R.C.M. 1947.**

**HELD: A nonresident student may not be admitted to a unit of the Montana university system when his admittance would exclude a qualified resident student.**

May 4, 1972

Mr. Robert T. Pantzer  
President  
University of Montana  
Missoula, Montana 59801

Dear President Pantzer:

You have requested my interpretation of the meaning and applicability of section 75-8601, Revised Codes of Montana, 1947, as it pertains to the admission of nonresident students in our higher educational institutions.

Section 75-8601, R.C.M. 1947, provides:

“(1) The regents may:

(a) prescribe tuition rates, matriculation charges and incidental fees for students in institutions under their jurisdiction.

(b) waive at their discretion, nonresident tuition for selected and approved nonresident students not to exceed at any unit two per cent (2%) of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of two per cent (2%) of unit enrollment for nonresident students who enroll at Montana college of mineral science and technology under provisions of the WICHE sponsored eight (8) state reciprocal agreement for mineral engineering education.

“(2) No nonresident student may be admitted to the exclusion of any resident student.”

From a literal reading of subsection (2) of section 75-8601, supra, its meaning appears to be clear. In any instance where a nonresident student and a resident student are vying for admittance to the same

position, the resident student is to be given preference if he otherwise qualifies. The nonresident student cannot be admitted to the position if it would exclude a qualified resident student.

In constructing the meanings of statutes, the Supreme Court of Montana has often stated that the plain meaning of a statute must be recognized. In **Sheridan County Electric Coop., Inc. v. Montana-Dakota Utilities Company**, 128 Mont. 84, the court said at page 87:

“It is also a well known rule of construction that so long as the language of a statute or ordinance is plain and unambiguous it is not subject to interpretation or open to construction, but must be accepted and enforced as written.”

The court again stated the proposition in **Montana Chapter, National Electrical Contractors Association, et al. v. State Board of Education**, 136 Mont. 382, at page 385, saying:

“It is well established that when the terms of a statute are plain, unambiguous, direct, and certain, the statute speaks for itself, and there is nothing for the court to construe.”

It would thus appear that there is no need to go beyond the language set forth in section 75-8601, *supra*, to determine its meaning.

**THEREFORE, IT IS MY OPINION** that the provisions of section 75-8601, R.C.M. 1947, as they pertain to the admission of nonresident students, are to be given their plain meaning: that is, no nonresident student may be admitted to any higher educational institution in Montana which is under the control of the board of education, *ex-officio* regents of the Montana university system, when his admittance would exclude a qualified resident student.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General