

VOLUME NO. 34

Opinion No. 51

**ADMINISTRATIVE PROCEDURE - Superintendent of public instruction, exclusion; STATE SUPERINTENDENT OF PUBLIC INSTRUCTION - Administrative Procedure Act, exclusion. Sections 75-5707 and 82-4202, R.C.M. 1947.**

**HELD: The requirements of the Montana Administrative Procedure Act do not apply to the office of the superintendent of public instruction.**

August 22, 1972

Mrs. Dolores Colburg  
Superintendent of Public Instruction  
State Capitol  
Helena, Montana 59601

Dear Mrs. Colburg:

You have asked for my opinion as to whether Title 82, chapter 2, Revised Codes of Montana, 1947 — the Montana Administrative Procedure Act — applies to the office of the superintendent of public instruction in view of section 82-4202 (g), R.C.M. 1947.

Section 82-4202, *supra*, provides in part:

“For purposes of this act:

“(1) ‘Agency’ means any board, bureau, commission, department, authority or officer of the state government authorized by law to make rules and to determine contested cases,

except that the provisions of this act shall not apply to the following:

\* \* \*

“(g) the administration and management of educational institutions . . .”

Section 75-5707, R.C.M. 1947, provides:

“The superintendent of public instruction shall have the **general supervision** of the public schools and districts of the state, and he shall have the power and shall perform the following duties or acts in implementing and enforcing the provisions of this Title: . . .” (Emphasis supplied)

Section 75-5707, *supra*, lists forty-one duties of the superintendent of public instruction, all of which are related to the “administration and management of educational institutions . . .” in the state.

The “Montana Administrative Procedures Study, Part II,” by Professor John P. McCrory, the reporter for the Montana Legislative Council, explained the exception currently found in section 82-4202 (g), *supra*:

“The administration and supervision of educational institutions has been exempt from coverage for two reasons. First, state laws relating to education are presently under study and may be modified. Second, it is believed that the desirability and feasibility of placing educational institutions, in part or in whole, within the coverage of the MAPA should be the subject of an independent study. It is believed that the elimination or modification of the exemption should be considered at a later date when the state has had experience with an administrative procedure act and studies with regard to education statutes have been completed and implemented.” **Montana Administrative Procedures Study, Part II, Comment, Section 102, p. 3.**

The office of the superintendent of public instruction has the general supervision of “the public schools and districts of the state,” and in exercising that general supervision, the office comes within the exclusion of section 82-4202 (g), *supra*.

THEREFORE, IT IS MY OPINION that the requirements of Title 82, chapter 42, R.C.M. 1947, do not apply to the office of the superintendent of public instruction.

Very truly yours,  
 ROBERT L. WOODAHL  
 Attorney General