

SCHOOLS AND SCHOOL DISTRICTS - Fees and charges to students, validity of Article XI, section 1, Montana Constitution.

- HELD:** 1. A school district may not levy fees or charges for any course or activity for which credit may be applied toward graduation. However, if a course or activity is not within the academic or educational goals of a school district or is not offered by the school district during the regular academic year as a part of the normal school function, reasonable fees or charges may be imposed.
2. The decision of the Montana Supreme Court in **Granger, et al. v. Cascade County School District No. 1**, 29 St. Rptr. 569, Mont. , P.2d , is to be effective during the 1972-73 school year.

September 11, 1972

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

Dear Mrs. Colburg:

I have received your letter dated August 24, 1972, requesting my opinion on the following questions regarding the recent decision of the Montana Supreme Court in **Granger, et al. v. Cascade County School District No. 1**, 29 St. Rptr. 569, Mont. , P.2d :

1. For what types of activities or courses offered by a school can fees be legally assessed of students to participate in those activities or enroll in such courses?
2. Is the court's decision to be effective during the current school year?

Granger was brought by several parents of school children seeking a declaratory judgment and injunction against certain school fees and charges. The district court held that fees and charges made of students in **required** courses were in violation of Article XI, section 1 of the Montana Constitution. The parents appealed to the extent that relief was not granted them in district court.

On appeal the issue before the court was: "Whether defendant school district can lawfully impose, directly or indirectly, fees or charges of any kind in respect to courses and activities within its

control?" After stating the facts of the case and setting forth a detailed list of the fees imposed, the court proceeded to its decision, noting that it found it necessary to decide the case on the basis of Montana constitutional requirements.

The constitutional requirement cited by the court is Article XI, section 1, Montana Constitution, which reads as follows:

"It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools."

In discussing what is meant by a "thorough system of public, free, common schools", the court noted that it found the recent California case, *Serrano v. Priest*, 96 Cal. Rptr. 601, 487 P.2d 1241, persuasive. The Montana Supreme Court said, after quoting from *Serrano*:

"This language in *Serrano* goes to the crux of the problem in the instant case. Any definition of a 'thorough system of public, free, common schools' must take into consideration the wide diversity of spending throughout Montana's school districts. Certain course and activity opportunities in Cascade County School District No. 1 are not available in other Montana districts. As long as the individual student is not deprived of equal access to educational courses and activities reasonably related to recognized academic and educational goals of the particular school system, the constitutional mandate is not violated." *Granger*, supra, at 577.

The court went on to note that constitutional requirements concerning free public schools have been construed by recent decisions in Idaho and Michigan. The court then said:

"In conformity with these holdings, the district court has construed our constitutional provision to mean that mandatory school courses and activities must be furnished free of charge as part of the constitutional requirement of a free, public education. Conversely, the district court held that school courses and projects which are optional or activities that are optional or extracurricular are not covered by the constitutional requirement and that fees and charges may be assessed for these. Thus the district court set up what may be termed a 'required course or activity' test.

"While we consider that the district court was on the right track in its approach, its choice of language in its findings of fact and conclusions of law is not correct. The fundamental difficulty with the district court's language lies in the use of the phrase 'courses or projects that are required by the defendant

School District' for which fees may not be charged, on the one hand, and courses and projects which are not required or for activities which are optional or extracurricular for which fees may be charged on the other hand. Just what is meant by a 'required course or activity' as distinguished from an 'optional or extracurricular course or activity'?

"For example, at the high school level certain specific courses are required for graduation and no difficulty is presented in finding that these fall in the 'required course' category. But what about the large number of courses offered, no one of which is specifically required for graduation, but from which the student must amass a given number of credits in order to satisfy the total educational requirement for graduation? Courses falling in this category are required in the sense that a given number must be taken in order to satisfy the total educational requirements for graduation, but they are optional in the sense that the student may elect which specific courses to take in order to satisfy such total education requirements.

"We believe that the controlling principle or test should be stated in this manner: Is a given course or activity reasonably related to a recognized academic and educational goal of the particular school system? If it is, it constitutes part of the free, public school system commanded by Art. XI, § 1, of the Montana Constitution and additional fees or charges cannot be levied, directly or indirectly, against the student or his parents. If it is not, reasonable fees or charges may be imposed.

"In this manner a degree of flexibility is insured. The school district may thus define its own academic and educational goals and the courses and activities that will carry credit toward graduation within the limits provided by law. At the same time, the individual student has a freedom of choice, within the limits of the educational framework so established, to pursue a course of study directed toward business, a trade, college preparatory, commercial, secretarial, or some other goal without regard to his financial ability to pay additional fees or charges." **Granger**, *supra*, pp. 577, 578.

The Montana Supreme court thus rejects the district court's "required course or activity test" which was based, at least in part, on the Idaho case of **Paulson v. Minidoka County School District No. 331**, 463 P.2d 935, and the Michigan case of **Bond v. Public Schools of Ann Arbor**, 178 N.W.2d 484. In its stead it substitutes its own test: "Is a given course or activity reasonably related to a recognized academic and educational goal of the particular school system?"

The test supplied by the court in **Granger** must be read as a part of the entire decision to ascertain meaningful guidelines upon which administrative action can be based. The court wisely recognizes that every fee that can be or is being charged cannot be dealt with in the decision. In the final paragraph of **Granger** the court states:

“While we do not disturb the specific findings of the district court, we do by this opinion modify the language as heretofore set forth. We recognize that the findings are not specific as to each fee discussed in answers to interrogatories, but hold that the specifics are better left to administrative determination under the guidelines set forth. Accordingly, we affirm the judgment as modified herein.” **Granger**, supra, at 579.

The administrative action referred to by the court will rest largely with the office of the superintendent of public instruction and the various school districts of the state. The court specifically recognizes that in this manner, a degree of flexibility will be insured.

The guidelines set forth by the court in modifying the lower courts' determination appear to encompass a prohibition against any fees or charges in courses or activities which carry credit toward graduation, whether they are required or elective. The fact that a course or activity carries credit toward graduation indicates that a school district has thus defined its own academic and educational goals and the course or activity is to be free of fees and charges. If it is not within the “academic and educational goals test,” reasonable fees and charges may be imposed. For example, interscholastic athletic contests for which no credit can be earned by those participating therein and for which reasonable charges are assessed only for those wishing to attend, would appear to be lawful under the guidelines of the **Granger** decision.

The court specifies that its test applies “only to courses and activities offered by the school district during the regular academic year as a part of normal school functions.” It states further:

“It has no application to supplementary instruction offered by the school district on a private basis during the summer recess or at special times. The latter are both historically and logically not included in the free public school system required by our Constitution. Accordingly, reasonable fees and charges may be imposed therefor.” **Granger**, supra, pp. 578, 579.

Thus, a course or activity which is not a part of the normal school function offered during the regular academic year may have a reasonable fee or charge imposed upon it. An example of this might be music courses, which are conducted by some schools during the summer months, for no credit.

Your second question seeks to place an effective date on the court's decision as it applies to all schools in the state. The Montana Supreme Court decided **Granger** on July 20, 1972. As the highest state court in Montana its decisions are law and will be followed by the district courts of this state.

The decision of the supreme court in **Granger** affirmed and modified a judgment entered by the district court and is particularly applicable to Cascade County School District No. 1; however, the decision is applicable to all school districts in Montana. Since the court did not deem it necessary to delay the application of its decision it must be considered the paramount expression of the law at this time and must be followed. Thus, the decision is effective for the 1972-73 school year.

THEREFORE, IT IS MY OPINION that:

1. Pursuant to the decision of the Montana Supreme Court in **Granger, et al. v. Cascade County School District No. 1**, 29 St. Rptr. 569, Mont. , P.2d , a school district may not levy fees or charges for any course or activity for which credit may be applied toward graduation, and that a school district may define its academic and educational goals by determining which courses and activities will carry credit toward graduation within the limits provided by law. If a course or activity is not within the academic or educational goals of a school district or is not offered by the school district for credit toward graduation as a part of the normal school function, reasonable fees or charges may be imposed.
2. The decision of the Montana Supreme Court is to be effective during the 1972-73 school year.

Very truly yours,

ROBERT L. WOODAHL
Attorney General