

**VOLUME NO. 35**

**Opinion No. 69**

**SCHOOLS AND SCHOOL DISTRICTS — Teaching and nonteaching employees; application of sick leave, group insurance. Sections 11-1024 and 59-1008, R.C.M. 1947.**

- HELD:**
- 1. Full-time nonteaching employees of a school district are entitled to sick leave benefits under section 59-1008.**
  - 2. School teachers are not subject to sick leave benefits under section 59-1008.**
  - 3. Under the court decision in *Teamsters v. Cascade County School District # 1*, nonteaching school district employees are entitled to vacation benefits retroactive for two years from the date of the original filing of that action.**
  - 4. Group insurance plans apply to both teaching and nonteaching employees of a school district under section 11-1024.**
  - 5. School district employees are eligible for group insurance benefits from the outset of their employment under section 11-1024.**
  - 6. A school district may contribute up to but not exceeding \$120 per annum for group insurance to employees under contract for a full academic year under section 11-1024.**
  - 7. The contribution of the school district for group insurance plans must be included as part of the salary of an employee.**
  - 8. A school district employee may pay additional premiums for group insurance as an assignment of wages.**

February 4, 1974

Mr. J. Fred Bourdeau  
Cascade County Attorney  
Office of the County Attorney  
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following questions:

1. Does section 59-1008, R.C.M. 1947, pertaining to sick leave, apply to nonteaching employees of a school district in the same manner as vacation leave in section 59-1001?
2. Inasmuch as section 59-1008 contains no exception for school teachers, are school teachers subject to provisions of the sick leave statute?
3. Does the two-year statute of limitations referred to in the **Teamsters** decision apply to the date of the supreme court opinion or to the date the action was originally filed in district court?
4. Does section 11-1024 pertaining to group insurance apply to school districts, and if so, does it apply to teachers as well as to nonteaching employees?

5. Does the phrase "full-time academic year of employment" mean that teachers with the standard 189 teaching day contract and other regular employees of the school system who work only during school months are covered?
6. Is the amount which the school district can pay for such insurance plans limited to \$10 per month per employee, or \$120 per year?
7. Must the contribution of the school district be included as part of the salary of such employee?
8. Is it possible for the school district to continue to operate its present insurance plans if the school district pays \$10 per month per employee and the employee pays the rest of the premiums from his salary?

In 1949, the Montana legislature passed an act providing for annual vacation leave for state, county and city employees. Chapter 131, Laws of 1949, now codified as section 59-1001, et seq., Revised Codes of Montana, 1947. In **Teamster, Chauffeurs, Warehousemen and Helpers, Local #45 v. Cascade County School District No. 1**, \_\_\_ Mont. \_\_\_, 511 P.2d 339 (1973), the Montana Supreme Court held that school district employees serving in nonteaching capacities are entitled to vacation benefits under section 59-1001, R.C.M. 1947. The court noted that schoolteachers are specifically excluded from the Act in section 59-1007, R.C.M. 1947.

The 1971 Montana legislature added a new section to chapter 10, Title 59, providing for uniform sick leave benefits for public employees. Section 59-1008, R.C.M. 1947, which was amended by the 1973 legislature, states in part:

- (1) Each full time employee of the state, or of any county or city thereof, is entitled to and shall earn sick leave credits from the first full pay period of employment ...

Since the Montana Supreme Court construed almost identical language contained in section 59-1001, R.C.M. 1947, in **Teamsters** and held that school district employees, other than teachers, are entitled to vacation benefits, it follows that similar employees, other than teachers, are likewise entitled to sick leave benefits under section 59-1008, R.C.M. 1947.

Section 59-1007, R.C.M. 1947, excepts certain persons from the Act, providing:

The term employee as used herein, does not refer to or include elected state, county, or city officials, **or schoolteachers.** (Emphasis supplied)

In construing a statute, the whole act must be read together so as to give effect to all of its provisions. **Yurkovich v. Industrial Accident Board**, 132 Mont. 77, 314 P.2d 866. Section 59-1007, R.C.M. 1947, specifically states "employee as used herein", thereby referring to the entire act. Since section 59-1008, R.C.M. 1947, was enacted in 1971 and was included as part of chapter 10,

Title 59, section 59-1007, *supra*, also applies to exempt schoolteachers from its sick leave provisions.

Concerning the retroactive benefits to school district employees, the court in **Teamsters**, *supra*, said:

Plaintiff's members and intervenor's members are entitled to the vacation benefits of section 59-1001, R.C.M. 1947, retroactive to the date of their employment subject to the two year statute of limitation placed upon a liability created by statute [section 93-2607, R.C.M. 1947] and reduced by the vacation benefits received under contract negotiations or administrative regulations.

Pursuant to this directive, plaintiffs members in **Teamsters** are entitled to vacation benefits accruing under section 59-1001 retroactive for two years from the date of the original filing. The retroactive vacation benefits must be reduced by vacation leave received under contract negotiations or administrative regulations and subject to the limitation in section 59-1002 that annual vacation leave for public employees may not be accumulated in excess of thirty days as of the last day of any calendar year. 34 **Opinions of the Attorney General**, no. 28.

Montana law provides for group insurance contracts or plans at section 11-1024, R.C.M. 1947. This statute provides:

All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds (2/3) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, to enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and governing bodies pay as part of the officers and employees salary ten dollars (\$10) per month for each officer and employee, and provided for employees of educational institutions whose employment contracts show at a minimum a full-time academic year of employment such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars (\$120) per year.

The **Teamsters** decision gave effect to a long line of court decisions holding that a school district is a political subdivision and instrumentality of the state. In referring to section 59-1001, *supra*, concerning vacation benefits the Montana court stated:

The legislature used the term "employees" in its generic sense to include all employees of the state **or employees of state agencies of which a school district is included ...** (Emphasis supplied)

As school districts are considered agencies of the state of Montana, employees of a school district are subject to section 11-1024 governing group

insurance benefit plans. Although previous attorney general's opinions (27 **Opinions of the Attorney General**, no. 49, and 30 **Opinions of the Attorney General**, no. 6) found that section 11-1024 had no application to school districts, in view of the court decision in **Teamsters**, supra, these opinions are no longer applicable. Section 11-1024 does not contain an exception for school teachers and thus applies to all employees, both teaching and non-teaching. By way of contract, section 59-1501, et seq., R.C.M. 1947, which provides for "State Employee Group Insurance" contains a specific statutory provision excluding "employees of ... school districts." Section 59-1501 (2), R.C.M. 1947.

In construing a statute, words and phrases are to be given their plain and ordinary meaning. **State ex rel. Cashmore v. Anderson**, \_\_\_\_ Mont. \_\_\_\_, 500 P.2d 921 (1972). The phrase "full time academic year of employment" in section 11-1024, supra, thus refers to the standard number of days required under a teaching contract. However, there is no statutory requirement that "employees" be employed for the full academic year before they can avail themselves of a group insurance plan under section 11-1024, supra. School district employees, both teaching and nonteaching, are therefore eligible from the outset of their employment to participate in group hospitalization, medical and health plans.

The last phrase of section 11-1024, supra, provides:

... and provided for employees of educational institutions whose employment contracts show at a minimum a full-time academic year of employment such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars (\$120) per year.

Under this phrase the school district can contribute up to but not exceeding \$120 per annum for group insurance for those employees who work under a contract specifying employment for the standard number of academic teaching days per year.

Section 11-1024 also specifically provides that:

All ... agencies of the state of Montana ... shall upon approval ... pay as **part of** the officers and employees salary ten dollars (\$10) per month for each officer and employee, ... (Emphasis supplied)

Pursuant to this statutory direction the contribution of the school district must be included as part of the salary of such employee.

Although the school district is limited to the contribution amount specified in section 11-1024 for group insurance plans, the school may continue to operate present insurance plans if the employee pays the additional premiums from his salary as an assignment of wages. Thus, for purposes of convenience, the school district may deduct the entire amount necessary to pay insurance premiums from the gross income of the employee, rather than requiring each employee to directly pay the balance of the insurance. An assignment of wages may be provided for by contract.

## THEREFORE, IT IS MY OPINION:

1. Full-time nonteaching employees of a school district are entitled to sick leave benefits under section 59-1008, R.C.M. 1947.
2. School teachers are not subject to the sick leave benefits in section 59-1008, R.C.M. 1947, as section 59-1007 excludes them.
3. School district employees in nonteaching capacities are eligible for vacation benefits under section 59-1001, supra, retroactive for two years from the date of the original filing of **Teamsters**.
4. Group insurance contracts or plans provided for in section 11-1024, R.C.M. 1947, are applicable to both teaching and non-teaching employees of school districts.
5. School district employees are eligible for group insurance benefits under section 11-1024 from the outset of their employment.
6. A school district, under section 11-1024, may contribute up to but not exceeding \$120 per annum for group insurance to employees under contract for a full academic year.
7. Under section 11-1024, R.C.M. 1947, the contribution of the school district for group insurance plans must be included as part of the salary of an employee.
8. An employee of a school district may pay additional premiums for group insurance in the form of an assignment of wages.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General