

VOLUME NO. 36

Opinion No. 28

CONSTITUTIONAL LAW — Right to know, teachers salaries; SCHOOLS AND SCHOOL DISTRICTS — Board of Trustees meetings, open to public; SCHOOLS AND SCHOOL DISTRICTS — Board of Trustees meetings, minutes open to public inspection; SCHOOLS AND SCHOOL DISTRICTS — Teachers, salaries subject to public right to know. Article II, Section 9, Constitution of Montana 1972. Sections 59-512, 75-5930, 75-5932, 75-6127, 82-3401, 82-3402, 82-3403, Revised Codes of Montana 1947.

HELD: The salaries of teachers and administrators of a public school district are subject to inspection by the public.

October 6, 1975

Mr. Jack M. Scanlon
Deputy County Attorney
400 East Park Street
Anaconda, Montana 59711

Dear Mr. Scanlon:

I am in receipt of your recent letter in which you ask my opinion on the following question:

Are the salaries of teachers and administrators of a public school district subject to inspection by the public?

Article II, Section 9, Constitution of Montana 1972, states:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies, or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

That provision clearly presents a balancing test approach to the dilemma. The issue is simply that, in every case, the public's right to know must be weighed against the individual's right of privacy. Such a test is not easily solved, however, without the introduction of other relevant factors. In the present case several statutes exist which give additional weight to the public's right to know.

Section 82-3402, Revised Codes of Montana 1947, provides that meetings of public agencies are to be open to the public. While teacher bargaining sessions might have been exempt from the provisions of that section by virtue of subsection (4), a more specific statute, section 75-6127, R.C.M. 1947, provided that professional negotiating sessions between employers and teachers could be open to the public. Both 75-6127 and subsection (4) of 82-3402 were repealed by the 1975 legislature.

Still in effect, however, is section 82-3403, R.C.M. 1947, which states:

Appropriate minutes of all meetings declared to be open, shall be kept and shall be available for inspection by the public.

Another general provision relating to public offices is contained in section 59-512, R.C.M. 1947, which states in pertinent part:

The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person. . .

Thus, any action taken at a public meeting must be recorded in the minutes of that meeting and such minutes are open to public inspection. With specific reference to meetings of the trustees of a school district, section 75-5930, R.C.M. 1947, states in part:

No business shall be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting shall be a majority of the trustees' membership. **All trustee meetings shall be public meetings, as prescribed by**

section 82-3401, R.C.M. 1947, except that the trustees may recess to an executive session under the provisions of section 82-3402, R.C.M. 1947. (Emphasis supplied)

Since former subsection (4) of 82-3402 has been repealed that section provides no basis for holding an executive session in regard to teacher's or other employee's salaries. Further weight is added to the public's right to know administrator's and teacher's salaries by section 75-5932, R.C.M. 1947, as amended; which requires that "a full and permanent record of all adopted policies and all other acts of the trustees" be kept and made available to the public within five working days following the approval of the minutes by the board and at a cost of no more than fifteen cents per page. That section also provides that one free copy of the minutes shall be provided to the local press within five working days following the approval of the minutes by the board. It is axiomatic then that employees salaries, which must be approved by the board of trustees, must be approved at a regular, public meeting, the minutes of which must be made available to the public and the press.

It is clear from the statutory language quoted above and the provision in Article II, section 9, Constitution of Montana 1972, that an overwhelming weight has been placed on the public's right to know in regard to action taken by the trustees of local school districts.

THEREFORE, IT IS MY OPINION:

The salaries of teachers and administrators of a public school district are subject to inspection by the public.

Very truly yours,

ROBERT L. WOODAHL
Attorney General