

VOLUME NO. 36

Opinion No. 35

PUBLIC EMPLOYEES — Teachers — Pay National Guard Summer Camp.

HELD: Section 77-2104, Revised Codes of Montana 1947, entitles a public school teacher to regular pay for a period not exceeding fifteen (15) working days during the school term when he is called on active duty for training with the Montana National Guard.

October 16, 1975

Mr. Harold Hanser
Yellowstone County Attorney
County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

Is a school teacher entitled to regular pay for a period not exceeding fifteen working days during the school term when he is called on active duty for training with the National Guard?

Section 77-2104 provides:

...A state, city or county **employee** who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States, and who has been an employee for a period of six (6) months, shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time. (Emphasis supplied)

A long line of Montana Supreme Court decisions have held that a school district is a political subdivision and instrumentality of the state. **Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 45 v. Cascade County School District No. 1**, 162 Mont. 277, 511 P.2d 339 (1973); **Longpre v. Joint School District No. 2 of Missoula & Mineral Counties**, 151 Mont. 345, 443 P.2d 1 (1968); **Fitzpatrick v. State Board of Examiners**, 105 Mont. 234, 70 P.2d 285 (1937); **State ex rel. Flathead County School District No. 29 v. Cooney**, 102 Mont. 521, 59 P.2d 48 (1936).

Consequently, the legislature's use of the term 'employee' in section 77-2104 must be taken in its generic sense to include employees of state agencies, of which a school district is included, unless a contrary intent is apparent. **Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 45**, at 280-281.

An exhaustive examination of the legislative history of section 77-2104 and related statutory provisions dealing with the employment status of teachers

reveals no legislative intent to exclude school teachers from the benefits provided in section 77-2104.

THEREFORE, IT IS MY OPINION:

Section 77-2104, Revised Codes of Montana 1947, entitles a public school teacher to regular pay for a period not exceeding fifteen (15) working days during the school term when he is called on active duty for training with the Montana National Guard.

Very truly yours,
ROBERT L. WOODAHL
Attorney General