

VOLUME NO. 36

Opinion No. 9

PUBLIC EMPLOYEES — Moving expenses. Section 82A-107 R.C.M. 1947.

HELD: An Agency of the state of Montana is not liable for employees' moving expenses which were not specifically contracted for.

August 5, 1975

Ms. Elizabeth L. Hurley, Chairman
Montana Educational Broadcasting Commission
Box 271
Livingston, Montana 59047

Dear Ms. Hurley:

You have requested my opinion on the following question:

Can the Montana Educational Broadcasting Commission pay the claims of employees for moving expenses to and from the state of Montana?

The Montana Educational Broadcasting Commission ceased operation on June 30, 1975, pursuant to House Bill 285. This bill provided \$154,000 for the Commission to meet its final obligations. Subsequent to this, three employees of the Commission submitted claims for moving expenses from Montana to various destinations and retroactive expenses for moving to Montana. These claims, which totaled \$13,717, were approved by the Commission, the Department of Administration and Governor Thomas L. Judge. You have indicated that to the best of your knowledge there were no oral or written contracts with these employees concerning moving expenses.

In reviewing the minutes of the Commission's meetings, I have found only one reference to an employment agreement which provides for the payment of moving expenses. The Commission agreed to pay one-half of the Executive Director's moving expenses to Montana. This amount was paid pursuant to the employment agreement. There were no other specific agreements made concerning moving expenses.

In light of this, combined with the fact that to the best of your knowledge there were no such agreements made with these employees, I find no contractual basis for the claims submitted. Section 83-604, Revised Codes of Montana 1947, which deals with the liability of the state, provides in part:

The state of Montana shall be liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, ...

Under the circumstances of the present situation where there were no contracts, and absent a civil judgment, a private individual would not be liable for the moving expenses. It follows from section 83-604, *supra*, that the state, which is treated as a private individual in this regard, would also not be liable for the moving expenses in question.

Further, when the legislature appropriated the \$154,000 for the closure of the Commission, they specifically included \$25,730 for salaries through June 27, 1975. No mention was made, nor were monies appropriated for moving expenses. From this, it can be assumed that the legislature did not intend to pay the employees' moving expenses.

It is also evident that if the Commission paid these claims, there would not be sufficient funds remaining to meet the obligations the legislature did provide for. Section 5 of House Bill 285 specifically forbids expenditures which exceed appropriations.

In addition, these claims are clearly made as a direct result of severance of employment. In 34 Opinions of the Attorney General 29 it was held that state employees are not entitled to severance pay. Although the opinion was based in part on the 1889 Constitution, it was also based on section 82A-107, Revised Codes of Montana 1947, which is still in effect. The relevant portion of the opinion stated:

Presently, the law in regard to compensation of public employees in executive departments, as written into executive reorganization in section 82A-107, R.C.M. 1947, states:

(2) Except as otherwise provided within this act, each department head may: (a) Subject to law, and the state merit system if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department.

Nowhere, however, is there made mention of the department head's having the power to allow severance pay. A well-settled maxim of administrative law is that a public agency or board has the power to do only that which is expressly granted by law. **State v. State Board of Equalization**, 133 Mont. 8; 319 P.2d 221 (1957). Therefore, it is apparent from statutory construction that the department heads do not have the power to allow severance pay.

THEREFORE, IT IS MY OPINION:

Because there were no contractual agreements entered into in this situation, the Montana Educational Broadcasting Commission is not obligated, nor in this case were they authorized, to pay the claims of employees for moving expenses to and from Montana.

Very truly yours,

ROBERT L. WOODAHL
Attorney General