

VOLUME NO. 37

OPINION NO. 150

HOLIDAYS - Public employees; HOLIDAYS - "School holidays" and "legal holidays;" HOLIDAYS - Non-teaching school employees as public employees; REVISED CODES OF MONTANA, 1947 - Sections 19-107, 19-108, 59-1007, 59-1009, 75-7406 and 75-7407; 37 OP. ATT'Y GEN. NO. 96.

HELD: School district employees, non-teaching and teaching alike, throughout the State of Montana, are entitled to days off on those holidays enumerated in section 75-7406, R.C.M. 1947, rather than the holidays of section 19-107. School district employees are therefore entitled only to days off on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and state and national election days when the school building is a polling place and school functions will interfere with the election process at the polling place.

11 July 1978

Ron Smith, Esq.
Hill County Attorney
Hill County Courthouse
Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion concerning the effect of a recent district court decision holding that non-teaching school district employees are entitled to days off on the school holidays enumerated in section 75-7406, R.C.M. 1947, rather than those holidays of section 19-107, R.C.M. 1947. The decision was rendered by the District Court of the Twelfth Judicial District in School District No. 16, Hill County, Montana v. Department of Labor and Industry, Docket No. 16040. It expressly overruled an Attorney General opinion, 37 OP. ATT'Y GEN. NO. 96, which had declared that non-teaching school district employees are entitled to days off on the legal holidays enumerated in section 19-107.

The legal effect of an Attorney General opinion is prescribed by section 82-401(6), R.C.M. 1947, which provides in relevant part:

* * *

If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general opinion shall be controlling unless overruled by a state district court or the Supreme Court. (Emphasis added.)

No appeal has or will be taken from the district court decision in School District No. 16, and since that decision overrules Opinion No. 96, it must be followed by all Montana school districts.

The decision not to appeal the district court ruling was made only after a comprehensive review of the prior Attorney General opinion, the arguments made by the plaintiff school district, and the district court's conclusions of law. That review was undertaken by the Attorney General's office after consultation with the Department of Labor and Industry and merits further comment in the present opinion.

The origin of the school holiday issue is section 59-1009, R.C.M. 1947, since it is in that section that public employees are entitled to receive an additional day off when their scheduled day off falls on a holiday. Section 59-1009 provides:

Any employee of the state of Montana, or any county or city thereof, who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off either the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

The provision must be interpreted "with a view to giving vitality to and making operative all provisions of the law and accomplishing the intention of the Legislature ***." Burritt and Safeway v. City of Butte, 161 Mont. 530, 534, 508 P.2d 563 (1973). The purpose of section 59-1009 is to ensure public employees do not lose regularly scheduled days off because those regularly scheduled days off happen to fall on holidays. The section expressly provides that public employees receive their regular days off in addition to holidays off. This was not at issue in School District No. 16, supra.

Similarly, there is no dispute that school district employees are state employees within the meaning of section 59-1009. This conclusion is based on the Montana Supreme Court case of Teamsters v. Cascade County School District No. 1, 162 Mont. 277, 511 P.2d 339 (1973), which held that school district employees are state employees within the meaning of public employee vacation provisions of section 59-1001, et. seq., R.C.M. 1947. The court in Teamsters, 162 Mont. at 280, said:

In the instant case, we hold that school district employees other than teachers are entitled to vacation benefits under section 59-1001, R.C.M. 1947. In doing so, this Court has given effect to a long line of this Court's decisions holding that a school district is a political subdivision and instrumentality of the State. (Citations omitted.)

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.

The rationale of Teamsters applies with equal force to holiday and day off provisions of section 59-1009 which describes public employees in identical terms as the vacation provision.

Thus, the sole issue presented in School District No. 16 was, to what "legal holidays" are non-teaching school district employees entitled? Section 59-1009, although it refers to legal holidays, does not define or enumerate specific holidays. However, at the time section 59-1009 was enacted in 1971, other provisions of the Montana Revised Codes defined legal holidays. It is presumed that the Legislature was aware of these existing provisions, and it is further presumed, in absence of some other clear indication to the contrary, that the Legislature was referring to those holidays defined under existing statutory provisions. See Fletcher v. Paige, 124 Mont. 114, 119, 220 P.2d 484 (1950). The principle provision for legal holidays was, and is, section 19-107, R.C.M. 1947, which enumerates twelve legal holidays, including Sundays. Since section 19-107 is a general provision, Opinion No. 96 looked to it and concluded that public employees are entitled to those holidays enumerated therein. However, Opinion No. 96 did not consider other, more specific holiday provisions which are

applicable to school districts. Those provisions are sections 19-108, 75-7406, and 75-7407, R.C.M. 1947. Section 19-108 provides:

Nothing contained in section 19-107 defining legal holidays shall be deemed to amend or change the provisions of sections 75-7406 and 75-7407 said sections being hereby expressly declared to define legal holidays for school purposes only. (Emphasis added.)

Thus, the Legislature expressly provided that the general holidays of section 19-107 shall not interfere with or change statutorily defined "school holidays" for "school purposes." Section 19-108 is controlling. "***[w]here a specific statute conflicts with a general statute the specific controls to the extent of any repugnancy." Huber v. Groff, ___ Mont. ___, 558 P.2d 1124, 1134 (1976).

The district court in School District No. 16 found that reference in section 19-108 to holidays for "school purposes" encompasses school holidays for all school district employees, teaching and non-teaching alike. I agree with the district court conclusion.

There is little question that schools must be in session on at least four of the holidays listed as legal holidays under section 19-107, R.C.M. 1947. Section 75-7406, R.C.M. 1947, provides:

School holidays. Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

- (1) New Year's day (January 1),
- (2) Memorial day (last Monday in May),
- (3) Independence day (July 4),
- (4) Labor day (first Monday in September),
- (5) Thanksgiving day (fourth Thursday in November),
- (6) Christmas day (December 25),
- (7) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place. When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

The section omits four of the holidays enumerated in section 19-107, to-wit: Lincoln's Birthday (February 12); Washington's Birthday (the third Monday in February); Columbus Day (the second Monday in October); and Veteran's Day (November 11). Further, section 75-7407, R.C.M. 1947, requires schools to conduct commemorative exercises on Lincoln's Birthday, Washington's Birthday and Columbus Day. Statutes must be construed reasonably, State ex rel. Ronish v. School District No. 1 of Fergus County, 136 Mont. 453, 460, 348 P.2d 797 (1960), and, as a practical matter, schools cannot operate effectively without the assistance of non-teaching personnel. School bus routes cannot be run without school bus drivers, cafeterias can't serve without cafeteria personnel, and administrative functions go unattended without school secretaries and clerks. There are other examples of non-teaching personnel whose help is essential to operating schools on a day-to-day basis. Thus, the conclusion that school holidays are intended to pertain not only to teachers and pupils but to non-teaching school district staff is a reasonable and compelling one.

Unfortunately, holiday statutes as presently written treat full time, year-around non-teaching school district employees differently than either teachers or other full-time public employees. As already noted, other public employees are generally entitled to four holidays unavailable to non-teaching school district employees. Additionally, other public employees are entitled under section 19-107 to the following Monday off when a holiday falls on a Sunday, whereas section 75-7406 expressly precludes substitution of Mondays or Fridays off when the holiday occurs on a weekend. Teachers, on the other hand, are not entitled to more holidays than non-teaching school staff members, but are typically employed on a ten month basis, receiving two month summer vacations. I therefore intend to recommend new legislation which will put full-time, year-around school district employees on equal basis with other public employees by providing such school employees with additional, compensating vacation time during non-school periods. I also urge school districts to consider providing such compensatory time on a contractual basis with their full-time, year-around non-teaching employees.

THEREFORE, IT IS MY OPINION:

School district employees, non-teaching and teaching alike, throughout the State of Montana, are entitled to days off on those holidays enumerated in section 75-

7406, R.C.M. 1947, rather than the holidays of section 19-107. School district employees are therefore entitled only to days off on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and state and national election days when the school building is a polling place and school functions will interfere with the election process at the polling place.

Very truly yours,

MIKE GREELY
Attorney General