

VOLUME NO. 37

OPINION NO. 160

SCHOOLS AND SCHOOL DISTRICTS - Counting pupil-instruction-related days in computing the ANB; REVISED CODES OF MONTANA, 1947 - Sections 75-6902 and 75-7405.

HELD: Pupil-instruction-related days may be counted in computing the ANB number pursuant to administrative regulation interpreting section 75-6902, R.C.M. 1947.

21 September 1978

Morris L. Brusett  
Legislative Auditor  
State Capitol  
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion concerning the correct method for computing the "average number belonging," or "ANB," for pupils attending public schools. The ANB is computed to determine the funding a school district receives from the school foundation program under Title 75, chapter 69, R.C.M. 1947. You stated that school districts are adding seven "pupil-instruction-related days" to the number of pupil instruction days, which increases the ANB of school districts, and thus, the funds paid by the state to each school district. You have requested my opinion as to whether these "pupil-instruction-related days" may be counted in computing the ANB.

The basis for calculating the ANB is provided by section 75-6902, R.C.M. 1947, as amended, which states in pertinent part:

Definition and calculation of average number belonging (ANB) The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180)

... When any pupil has been absent, with or without excuse, for more than ten (10) consecutive days including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

"PIRD" is defined and explained by section 75-7405, R.C.M. 1947:

Pupil-instruction-related day. A pupil-instruction-related day shall be a day of teacher activities devoted to improving the quality of instruction. Such activities may include, but are not limited to, in-service training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of seven pupil-instruction-related days may be approved by the superintendant of public instruction in accordance with the policy adopted by the board of education. Such days shall not be included as a part of the required minimum of one hundred eighty (180) days of pupil instruction.

The fundamental rule of interpreting these statutes is that the intention of the Legislature controls, and if that intent can be determined from the plain meaning of the words, the statute speaks for itself, and there is nothing left to construe. Security Bank and Trust Co., v. Connors, Mont. \_\_\_\_\_, 550 P.2d 1313 (1976). In this instance, section 75-6902 does not mention PIRDs for purposes of determining the "aggregate days of absence." It does mention, however, that PIRDs are to be included in the ten consecutive days of absence for which a student is removed from consideration for ANB computation. Section 75-7405 states that PIRDs shall not be included in the minimum 180 days for pupil instruction, but does not address the question whether they may be added after 180 days of pupil instruction are provided. Thus, the statutes are ambiguous as to whether the Legislature intended PIRDs to be counted in the computation of ANB.

Where a statute is doubtful or ambiguous, practical administrative interpretations of that statute by the executive department charged with its administration are entitled to

the highest respect. Where such interpretation is acted on for a number of years, it will not be disturbed except for very cogent reasons. Assiniboine & Sioux Tribes v. Nordwick, 378 F.2d 426 (9th Cir. 1967), cert. denied, 389 U.S. 1046, 88 S.Ct. 764, 19 L.Ed. 838; Bartels v. Miles City, 145 Mont. 116, 399 P.2d 768 (1965). A majority of jurisdictions which have considered the question of school attendance, enrollment, or pupil population for purposes of apportionment of funds adhere to the view that the determination of the issue by the proper administrative official is conclusive. 80 ALR.2d 955, section 3. The administrative interpretation was thus controlling in a situation similar to this issue, where the Legislature was aware of the application of the administrative interpretation over a twelve year period, and made no material or substantial changes. Long v. Dick, 87 Ariz. 25, 347 P.2d 581, 80 ALR.2d 949 (1961).

It is also a rule of statutory construction in Montana that the Legislature acts with full knowledge and information as to subject matter and existing conditions, including the construction placed on a law by the executive officers acting under it. Helena Valley Irrigation Dist. v. State Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967). Although legislative intent is generally indicated by the Legislature's action rather than failure to act, its silence may give rise to the implication of its legislative purpose. Bottomly v. Ford, 117 Mont. 160, 157 P.2d 108 (1945). Thus, the Legislature is deemed to have sanctioned an interpretation of an executive department where it does not change it upon continued opportunity to do so. Miller Ins. Agency v. Porter, 93 Mont. 567, 20 P.2d 643 (1933).

In this instance, the Superintendent of Public Instruction has issued an administrative rule pursuant to the Montana Administrative Procedure Act, Title 82, chapter 43, R.C.M. 1947, which directly addresses the issue of using PIRDs in computing the ANB. A.R.M. 48-2.38(1)-S3800 provides:

POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (I) A school which in any year was in session for at least 180 pupil instruction days may count for the following year's foundation program a total of not more than seven days in addition to the required 180 pupil instruction days provided that such additional days were used for one or more of the following purposes in accordance with the regulations hereby established:

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(a) Pre-school staff orientation (not to exceed two days): staff meeting(s) held prior to the beginning of pupil instruction for the purpose of organization for the school year.

(b) Staff in-service training programs: programs scheduled during the year for the purpose of improving instruction.

(c) Parent-teacher conferences: conferences between teachers and parents for the purpose of acquainting parents with the school and the progress of their children.

(d) Post-school record and report completion (not to exceed one day): record and report completion at the end of the pupil instruction year. This day may be divided so as to provide 1/2 day at the end of each semester.

(e) State teachers' association meetings (not to exceed two days).

The history of this administrative regulation indicates that the rule was effective July 1, 1962, and has been followed since that date. The Legislature has not altered the interpretation of this rule either by statute or legislative review. Under the foregoing analysis, this interpretation by the Superintendent of Public Instruction has thus been sanctioned by the Legislature. Further, if this rule was adopted in accordance with MAPA, under expressly delegated authority, it has the force of law as a substantive rule. Section 82-4202(2), R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

"Pupil-instruction-related days" may be counted in computing the ANB number pursuant to administrative regulation implementing section 75-6902, R.C.M. 1947.

Very truly yours,

MIKE GREELY  
Attorney General